

CANADA / JUDGMENT

E.G. v. M.A.

2025 BCSC 1463

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Supreme Court of British Columbia

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2025 BCSC 1463 E.G. v. M.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

E.G. v. M.A.,

2025 BCSC 1463

Date: 20250730

Docket: E65292

Registry: New Westminster

Between:

E.G.

Claimant

And

M.A.

Respondent

Before: The Honourable Justice Layton

Reasons for Judgment

Counsel for the Claimant:

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Place and Date of Trial:

Port Coquitlam, B.C.

March 24-28, 31, 2025

April 1-4, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 30, 2025

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Introduction

- [1] This family law proceeding arises from the breakdown of the parties' three-year marriage, during which they had a child, N.A., who turned five in January 2025. The claimant is N.A.'s mother, and the respondent is her father.
- [2] The issues for determination relate to divorce, parenting arrangements, child and spousal support, and the division of family assets and debts. In seeking orders relating to these matters, the parties rely on both the Divorce Act, R.S.C. 1985, c. 3 [Divorce Act] and the Family Law Act, S.B.C. 2011 c. 25 [FLA].

- [3] The most contentious issue, and the subject of much of the evidence, concerns the allocation of parenting time with N.A. Currently, the claimant is N.A.'s primary caregiver, and the respondent has two overnights of parenting time each week. But the claimant seeks to reduce the respondent's weekly parenting time to three partial-day sessions totalling 14 hours, while the respondent asks for equal parenting time.
- [4] I will begin these reasons by reviewing some background facts regarding the parties' relationship and post-separation events. I will then make general comments about each party's credibility. After that, I will make findings regarding some of the areas most relevant to determining N.A.'s best interests: (a) family violence by the respondent; (b) his mental health; (c) the parties' communications regarding parenting; and (d) how N.A. is doing under the current parenting regime.
- [5] After setting out these findings, I will comment on the applicable statutory regimes, before addressing the divorce request and deciding the disputed issues.
- [6] To protect N.A.'s privacy and well-being, I have initialized her name and the names of the parties. I have also anonymized identifying details where possible.

Background

- [7] The claimant is 33 years of age, while the respondent is 40 years old. They were both born in Egypt--the claimant in a large city and the respondent in a smaller one, but are now Canadian citizens. Their families have always been active in an Egyptian church ("Church"), and they are both members of that Church in Canada.
- [8] The respondent's father is a priest in the Church and his mother is a professional. He has two sisters, one of whom lives in the Lower Mainland. The respondent graduated from medical school in 2009, then worked as a general practitioner in Egypt. He immigrated to Canada in 2012, after which he obtained accreditation to work as a doctor in this country. By mid-2015, the respondent was practising medicine for a health authority in rural Manitoba.
- [9] The claimant's parents used to own and operate three pharmacies, but now have only one. She has a younger sister, who lives with their parents while at university. Like the respondent, the claimant excelled academically, and in 2013 graduated from university with a pharmacy degree. She worked as a pharmacist in two hospitals in her home city, which appears to have been a period of internship that ended around late 2017. The claimant's parents planned to buy a pharmacy at which she would work, and started to look for suitable pharmacy for this purpose.
- [10] The claimant's plan to work as a pharmacist in Egypt was pre-empted by her engagement to the respondent. The claimant and respondent had not known each other previously, but contact was arranged through their fathers by a priest, who knew both men. The parties began communicating by phone, text or video in November 2017.

- [11] In early January 2018, the respondent travelled to Egypt for two weeks. He and the claimant met each other's families and had some outings. After a couple of meetings, the claimant accepted the respondent's request to exchange rings, which represented a level of commitment but not a formal engagement.
- [12] After the respondent returned to Manitoba, the parties resumed communications by text, phone or video. I accept the claimant's evidence that shortly after returning to Canada the respondent expressed a wish that they marry soon because facilitating her move to Canada could take time.
- [13] The respondent visited Egypt for two weeks in the spring of 2018, at which point the parties were formally engaged. He returned to Canada but came back to Egypt for their wedding in September 2018, following which they spent a week in Paris. The respondent flew back to Manitoba, while the claimant stayed in Egypt pending completion of paperwork allowing her to move to Canada.
- [14] In December 2018, the respondent spent a week in Egypt visiting the claimant. In the spring of 2019, he visited again for two weeks, during which the claimant became pregnant with N.A.
- [15] The respondent moved to British Columbia from Manitoba in early August 2019. The claimant joined him there later that same month.
- [16] The claimant had no friends or family in Canada when she first arrived. She also had no savings or source of income. However, the claimant had studied English in school, and her pharmacy education was entirely in that language. Language therefore presented little if any barrier to her working as a pharmacist in British Columbia, provided she obtained accreditation.
- [17] The parties rented an apartment in the Lower Mainland, and the respondent started working at a medical clinic in a nearby community.
- [18] The claimant was due to give birth to N.A. in early 2020, so she quite reasonably held off studying for the Pharmacy Examination Board of Canada ("PEBC") exams that she would need to pass to work as a pharmacist.
- [19] N.A. was born in January 2020. The claimant's mother and sister visited from Egypt at this time, staying a few weeks after the birth to assist with childcare and managing the household.
- [20] Following N.A.'s birth, the claimant stayed at home as a full-time mother. There is no dispute that she was N.A.'s primary caregiver while the parties lived together.
- [21] I will turn now to provide some information about the parties' financial arrangements during their time as a couple in Canada.

- [22] The respondent was the sole shareholder of the medical corporation through which he was paid by his medical clinic ("Corporation"). In 2020, he began working at a second medical clinic. Until the early fall of 2021, both clinics billed the province's Medical Services Plan and private patients directly for the respondent's work, and on a biweekly basis paid the Corporation 75% of the payments received, retaining the other 25% to cover overhead.
- [23] After the claimant arrived in Canada, the respondent transferred one-half ownership in the Corporation to her, in the form of nonvoting shares. This transfer occurred in November 2019. The claimant thereafter received a salary from the Corporation, although she never performed any work in return.
- [24] The claimant had no access to the Corporation's bank account, but each month the respondent transferred funds into their joint personal account. This latter account provided the claimant's only source of money. She did not recall the monthly amount deposited, but agreed that it represented their respective incomes from the Corporation.
- [25] Looking at the claimant's tax returns and the relevant bank statements for 2020 and 2021, I conclude that her "income" deposited into the joint account was likely about \$3,000 per month, while the respondent was paid over double that amount.
- [26] The parties purchased a house in the Lower Mainland as joint tenants in August 2020. The purchase was funded by a mortgage and money from the Corporation's bank account.
- [27] I will explore in more detail the problems that led to the parties' separation in August 2021, but a few of the more important events are worth mentioning as part of this background chronology.
- [28] Arguments in the late summer or early fall of 2020 led the parties to alter a planned family vacation in Egypt so that the claimant and N.A. would leave a couple of months early, in October, instead of staying on without the respondent for a month or so at the back end of the trip, which had been the original idea.
- [29] As per the modified plan, the respondent joined the claimant and N.A. at her parents' apartment in late December 2020. A significant argument on December 31 resulted in the respondent travelling by himself to his parents' residence in the city where they lived. After mediation involving clerics from the Church, the respondent returned to Canada as planned in late January 2021, but the claimant and N.A. stayed until late February.
- [30] The parties' arguments continued after the claimant and N.A. returned to Canada from Egypt.
- [31] In April, the respondent consulted a family lawyer, and in July he filed, but then withdrew, an application to the Church for a remarriage permit. As for the claimant, she considered moving out of the former family home, and started to look for an apartment after the respondent had filed his remarriage application.

- [32] A particularly fractious argument on August 20 and 21 resulted in the claimant and N.A. moving into an apartment on August 23.
- [33] Despite several failed attempts, the parties never reconciled and have remained separated since August 2021.
- [34] On September 24, 2021, the parties entered into an interim without prejudice agreement under which they shared joint guardianship and parental responsibilities for N.A. The agreement provided that N.A. would primarily live with the claimant but the respondent would have parenting time for three hours on Thursdays and Sundays, as well as such other parenting time as agreed to by the parties in writing.
- [35] The claimant filed her notice of family claim on July 11, 2022.
- [36] The respondent filed his response to the family claim and a counterclaim on September 20, 2022.
- [37] The claimant filed her response to counterclaim on September 27, 2022.
- [38] By the time these pleadings were filed, the parties had adjusted the parenting time schedule so as to gradually increase the respondent's parenting time. As indicated in the counterclaim and response to counterclaim, by September 2022 he had parenting time for five hours starting at 9:30 a.m. on Wednesdays and Saturdays, and for three hours on Tuesdays starting at 5:00 p.m.
- [39] The respondent's parenting time subsequently increased further as a result of two interim orders.
- [40] First, on June 21, 2023 an interim without prejudice order increased the respondent's parenting time: (a) immediately until the end of August, to Tuesday at 5:00 p.m. until Wednesday at 2:30 p.m., and for five hours on Saturdays; and (b) from September 1, 2023 until the end of 2023, for an additional three hours on Saturdays. The order provided that the parties could revisit the issue of parenting time after December 31, 2023.
- [41] Second, on January 24, 2024 a consent interim without prejudice order further increased the respondent's parenting time: (a) until February 29, 2024, for an additional two-and-a-half hours on Saturdays; and (b) starting on March 1, 2024, for a second overnight, from Fridays at 5:00 p.m. until Saturdays at 7:00 p.m.
- [42] N.A. will start kindergarten in September 2025. The parties have agreed on the school, which is the same one N.A. has been attending three half-days per week for preschool care.
- [43] The respondent has been paying child and spousal support for most of the time since separation, but has not paid anything towards N.A.'s special or extraordinary expenses under section 7 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines].

- [44] Since separation, the claimant has completed two of the three main PEBC exams required to obtain accreditation as a pharmacist in British Columbia. At the conclusion of trial in April 2025, she needed to complete her final exam, as well as a university bridging program that involves three months of coursework and three months of practice.
- [45] The respondent lived in the former family home until June 2024, when it was sold. The parties each received half of the net proceeds of sale, to be held in trust by their respective lawyers.

Credibility and Reliability

- [46] Credibility refers to a witness's honesty, assessing whether they are trying to be accurate. Reliability relates to whether a witness's evidence is inaccurate for a reason other than dishonesty, such as faulty powers of observation, memory or narrative skills.
- [47] In assessing witness credibility and reliability, I have applied the factors mentioned in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187.
- [48] For most of the witnesses, I will assess credibility and reliability in the context of the issues as they are discussed. However, I wish to make some general comments about the credibility and reliability of the claimant and respondent, given the relative prominence of their testimony.
- [49] While I am not prepared to uniformly accept or reject the testimony of either party on all disputed factual matters, on balance I have more concerns regarding the respondent's credibility and reliability. I will provide some examples to show why.
- [50] One of the issues raised in the evidence concerned the respondent's failure to disclose to the claimant that a 2013 blood test showed he had a particular genetic condition. In his testimony, the respondent insisted there was no risk that this condition could result in harm to N.A. However, this testimony was belied by his insistence that he and the claimant both be tested for this condition, first in Egypt shortly before the claimant became pregnant, then again a month or so before N.A.'s birth, after he learned that the first test was not sufficiently comprehensive. I reject as nonsensical the respondent's assertion that he proposed they both take these tests, without disclosing his 2013 test result to the claimant, because he was being "extra honest" with the claimant.
- [51] At times, the respondent's testimony also struck me as exaggerated. For instance, he described becoming extremely upset on their Paris honeymoon, to the point of crying, after drinking one or two ounces of alcohol and then inadvertently spilling a soft drink at a fast food restaurant. The respondent's claim to have felt this level of upset because he realized that alcohol could be really bad, while at the same time insisting he had experienced no symptoms of intoxication, is illogical.

- [52] The respondent also testified that during an August 2022 reconciliation meeting held in a park with a priest, the claimant held her phone up to her face as if recording him, despite being asked not to do so, and only put the phone down after being asked by the priest, but then propped the phone up so that it remained pointed at the respondent. The respondent made these claims as part of his justification for texting the claimant and the priest with a request not to bring electronic devices to a subsequent reconciliation meeting. The priest's testimony, which I accept, is materially inconsistent with the respondent's description of the claimant's manner of handling her phone at the meeting in the park.
- [53] A final example of why I have some concerns regarding the respondent's credibility and reliability arises from inconsistencies between his trial testimony and emails he sent to the claimant following their separation. In his email dated December 31, 2021, the respondent apologized for his "anger and rage" on several occasions over the past year, including shouting at her father and insulting her and her family on New Year's Eve in 2020. And in his email dated September 7, 2021, he apologized for lying and hiding his genetic condition. These statements are inconsistent with the respondent's testimony regarding the events on New Year's Eve 2020 and his failure to disclose having the genetic condition.
- [54] Despite these frailties in aspects of his evidence, I do not find that the respondent misstated events whenever it was in his best interest to do so. For example, by and large I found him to be honest and trying his best to provide reliable evidence about financial matters material to the litigation. To the extent the claimant was still suggesting at the end of the trial that the respondent may have hidden assets, this allegation has not been proven and I decline to draw any adverse inference against him based on late or missing disclosure. I also found the respondent to be genuine in his expressions of love for and attentiveness to N.A., and in describing the substantial efforts he has made to organize his busy work life around her care.
- [55] Nor do I unequivocally accept as reliable the claimant's testimony on every disputed factual point. As discussed below, in a few instances I believe she has unconsciously exaggerated matters material to this litigation. I was also struck by her inability to identify one positive thing about the respondent as a father or parent when asked to do so during cross-examination. While I accept that the claimant rarely sees the respondent engaged in parenting, they communicate frequently about N.A.'s care through email, and as described later in these reasons those emails show him to be a caring and concerned father.
- [56] Ultimately, the resolution of many of the disputed issues in this case requires an assessment of credibility and reliability in light of the particular circumstances surrounding each issue. In some instances, the testimony of other witnesses has assisted me in this respect, although most of the witnesses have some understandable potential for bias in favour of the calling party, because they are family members or close friends.

Family Violence by Respondent

- [57] The claimant alleges that the respondent abused her physically and psychologically during the marriage, which she says constitutes family violence and reveals character flaws that justify reducing his parenting time in N.A.'s best interests, or at the very least not increasing it beyond the current level.
- [58] The respondent accepts that some of the alleged incidents occurred, but contends that others did not. He says that, in any event, any incidents of family violence during the marriage are dated and do not raise any concern regarding N.A.'s best interests.
- [59] In this section of my reasons, I will make findings of fact regarding the alleged incidents. But I will mostly reserve consideration of the extent to which those findings impact N.A.'s best interests for the part of my reasons dealing with parenting time.
- [60] The claimant alleges the respondent struck her forcefully with his open palm on the top of her head at her parents' apartment in Egypt on New Year's Eve 2020. Also present were her father and sister, who was holding N.A.
- [61] The claimant testified this assault occurred during an argument with the respondent about plans to visit his parents, during which he became angry, yelling and insulting her family. In his testimony, the respondent agreed they had argued, but said the claimant's father was the aggressor. He admitted raising his voice in response, but denied insulting the claimant or her family, and denied hitting her on the head.
- [62] I find that the respondent struck the claimant while in an extremely angry state, in the manner described in her testimony and the testimony of her father and sister. I come to this conclusion in part because of the concerns I have already expressed about the respondent's credibility and reliability. But I also find unconvincing his claim that the manner of striking described by the other witnesses more resembles him simply resting his hand on the claimant's head. In addition, the yelling and insults attributed to the respondent are consistent with admissions in his December 31, 2021 email to the claimant, as well as his admitted conduct on August 20 and 21, 2021, a topic to which I will now turn.
- [63] By mid-August 2021, the parties' relationship had almost entirely broken down. They were arguing frequently and sleeping in separate bedrooms. The respondent had consulted a family lawyer and made, but also withdrawn, an application to the Church to be permitted to remarry. The claimant had told him she was going to seek legal advice and move out of the house. She had also opened her own bank account and located an apartment in which she and N.A. could live after separation.
- [64] I accept the claimant's evidence that on August 20 and 21, 2021 the respondent yelled at her so forcefully that she feared for her safety and locked herself and N.A. in their bedroom. As the respondent continued to yell, she made numerous brief audio recordings on the phone, to prove what was occurring in case she decided to call 911 for help. These recordings were played at trial, and show the respondent angrily and loudly insulting the claimant. For

example, he said she had failed to respect him as her husband, called her a liar, dirty or trash, and stated that she married him only for his money and was thus a prostitute. The insults extended to her parents, and included religious epithets.

- [65] In some of these recordings, N.A. can be heard babbling in the background, but in one of them she cries for about 40 seconds. N.A. was about 19 months old at the time.
- [66] The incidents on New Year's Eve 2020 and August 20 and 21, 2021 probably constitute high-water marks in the respondent's verbal and physical abuse of the claimant.
- [67] However, I accept the claimant's evidence that the respondent yelled at her and made similar insulting comments on other occasions prior to separation. Her testimony is supported by admissions made in his emails dated September 7 and December 31, 2021. It is also indirectly supported by the testimony of the priest who in August 2022 worked with the parties in an attempt at reconciliation. This priest testified, and I accept, that during a phone call with the respondent and another clergyman the respondent began to yell and shout, which forced the clergymen to end the call. The respondent subsequently apologized to both clergymen.
- [68] I further accept the claimant's evidence that the respondent expected her to obey him by virtue of his status as her husband, which evidence is supported by comments the respondent made to the above-mentioned priest and another counsellor who, in the winter and spring of 2022, attempted to assist the couple in reconciliation and was called as a witness at trial.
- [69] I also accept the claimant's evidence that the respondent tried to control her behaviour in certain respects. For example, he placed her and N.A.'s passports in his home office after they returned from Egypt in February 2021, although the passports were not inaccessible and she later took them back. The respondent also berated the claimant for brushing her hair in front of a window with the blinds open. And he demanded she not use her credit cards while in Egypt after the incident on New Year's Eve 2020, and temporarily took those credit cards from her during a significant argument in April 2021.
- [70] To the extent the respondent's evidence differs on these points--for instance regarding what happened during the April 2021 argument--I prefer the testimony of the claimant.
- [71] I am not, however, prepared to conclude that the respondent took the claimant's credit cards on other occasions, given the absence of any detail provided by her in this regard. Indeed, I find her testimony that he took her credit cards away every time they had an argument to be an exaggeration, because she described other arguments without mentioning him taking away her credit cards, and if this broad claim were true it would mean that in the final months of the relationship the respondent was continuously taking away and returning the credit cards, which I find unlikely.

- [72] I also reject any suggestion that the respondent improperly controlled the claimant by significantly restricting the money available to her in the joint account, including because the available bank records indicate that substantial amounts were deposited into this account every month. That said, I accept the claimant's evidence that during the April 2021 argument the respondent threatened to close the joint account and instead provide her with \$1,000 per month.
- [73] The claimant also testified that the respondent began drinking excessive amounts of alcohol starting around February 2021. She indicated that on a couple of occasions during this time, he forcefully tried to have sexual contact, for example by kissing her, even though she was not interested. My understanding of the claimant's evidence is that on both occasions she pushed the respondent away and he did not persist in his attempts.
- [74] I accept that these two incidents occurred, and I reject the respondent's explanation with respect to one of them, which ascribes to the claimant almost caricature-like behaviour that in any event is inconsistent with the acrimonious state of their relationship at that time.
- [75] I nonetheless accept the respondent's evidence that he no longer drinks alcohol at his residence and has not bought alcohol since 2021.
- [76] Turning to post-separation conduct, the claimant adopted and elaborated on information set out in an April 2022 email, sent by her counsel to his lawyer, describing child exchanges that had occurred around that time. She testified that N.A. was reluctant to go to the respondent, and would cry and cling to the claimant, who would try to facilitate the exchange by distracting N.A. or calming her down. The process sometimes took as long as 30 minutes, during which the respondent occasionally insulted and yelled at her using terms similar to those he had used on August 20 and 21, 2021, and said she had no right to child or spousal support.
- [77] In his testimony, the respondent explained that during this time N.A. was barely two years old, and not comfortable with the exchanges because following the separation she did not know him very well. He said that on one occasion he became emotional and upset at the claimant, although he denied yelling at or insulting her, or making any reference to child or spousal support.
- [78] I prefer the claimant's evidence over the testimony of the respondent regarding the incidents described in her lawyer's email, although I accept his evidence that he felt frustration during this period because N.A. was reluctant to go with him.
- [79] The claimant further alleges that the respondent engaged in family violence within the meaning of the FLA through his litigation strategy in this proceeding. As stated in *L.D.B. v. A.N.H.*, 2023 BCCA 480 at paras. 113-115, family violence will occur where one spouse uses the court's process to continue to control, intimidate, embarrass or harass the other spouse after their relationship has ended.

- [80] I do not, however, find that the respondent has misused the litigation process in this way. For example, he did not bring an excessive number of applications, and the applications he brought do not appear to have been frivolous or oppressive. And while the respondent changed counsel numerous times, the evidence falls far short of establishing that his doing so amounted to family violence through litigation.
- [81] These are just a couple of examples. I will not itemize every aspect of the respondent's conduct in this litigation or during reconciliation attempts that the claimant says supports a finding of family violence. Suffice it to say that, whether taken separately or together, on the limited evidence before me almost all of the examples provided are insufficient to establish family violence.
- [82] The one instance where the respondent's litigation conduct appears problematic relates to the claimant's request through counsel in March 2024 for an interim advance of \$60,000 from the line of credit on the former family home. The next day, the respondent withdrew the entire amount available from the line of credit, just under \$100,000. On April 26, 2024, this court made a consent order that included a term that the respondent is solely responsible for this debt.
- [83] At trial, the respondent testified that he withdrew these funds because the available line of credit had been created by him paying down the mortgage principal, and he owed about \$50,000 in taxes and needed to pay for important dental work and vehicle repairs. The respondent added that he instructed his counsel to inform claimant's counsel that he had withdrawn this money and would allow it to be deducted from his share of the proceeds from the sale of the former family home.
- [84] I do not find that these explanations are untrue. But in this instance the respondent's conduct shows a willingness to privilege his financial interests over those of the claimant and to ignore the litigation process in doing so. I question whether this conduct meets the definition of family violence, but categorizing it in this way would not, in any event, impact my decision one way or the other regarding any disputed aspect of this case.

Respondent's Mental Health

- [85] The claimant contends the respondent suffers from undiagnosed mental health deficiencies that detract from his ability to adequately parent N.A. In her written closing submissions, she states that he is struggling with "extreme paranoia", anger and impulse control, and symptoms indicative of ADHD.
- [86] I will address the evidence upon which the claimant relies shortly. But an overarching and important reason why I wholly reject her contention is that three witnesses who work with the respondent at the two medical clinics provided uniformly positive reviews of his work and professional reputation. While I recognize that an individual can present differently in the family and workplace settings, I do not accept that the alleged mental health struggles, if they existed to the extent alleged, could have been compartmentalized and thus hidden by

the respondent so as to escape entirely the notice of his professional colleagues.

- [87] A centrepiece of the claimant's argument relates to a bizarre letter the respondent received while working as a doctor in Manitoba in January 2019. The claimant asserts that his reaction to this letter, which included taking a week off work and moving to a hotel in Winnipeg, was disturbingly unreasonable. She appears to suggest that this letter caused him to quit his job and leave Manitoba altogether.
- [88] I reject the claimant's argument on this point. Many or most doctors may have dismissed the letter as a practical joke or, more likely, the harmless product of a delusional mind, as apparently did the respondent's mentor at the health authority. But the respondent's fear that the letter may have been written by a delusional patient or other local person, who might possibly present a danger, was not altogether misplaced. His evidence that the letter writer turned out to be a schizophrenic individual who was then committed under mental health legislation was not challenged in cross-examination.
- [89] I also reject that any suggestion that the respondent left Manitoba because of this letter, including because he did not leave that province until over six months after receiving it. I accept the respondent's evidence that he moved to British Columbia because the remote area in which he worked had harsh winters and lacked the amenities he was looking for in raising a family.
- [90] The claimant testified that the respondent frequently talked to himself, which in her closing submissions was presented as a worrisome trait. However, in cross-examination she conceded that the respondent talked to himself as though thinking out loud, and the respondent testified that he has done this since childhood, as it often helps him to think, and is something he developed as a studying method. I accept the respondent's evidence, and do not view his habit of occasionally talking to himself as concerning vis-à-vis N.A.'s best interests.
- [91] The claimant further testified that the respondent accused her of recording him with cameras or other devices and hacking his phone and computer. However, on the claimant's own evidence, she accessed his online medical information by using his password without permission, and on at least one other occasion reviewed texts on his phone without his consent. Nor do I view as problematic the respondent's suspicion that the claimant's mother looked at his work documents while visiting them shortly after N.A.'s birth, in particular because he and her mother had disliked each other even before the marriage occurred.
- [92] The comments the respondent made to the priest who was assisting in reconciliation attempts in August 2022, in particular about a photographer at the park where they met having been conducting surveillance for the claimant, appear patently unreasonable. But the respondent did not persist in this view at trial, and seen in the context of all of the other evidence it does not cause me to have concerns regarding the respondent's ability to parent N.A.

- [93] This conclusion is supported by the 359 pages of emails exchanged between the parties regarding N.A.'s parenting arrangements, which as discussed below show the respondent to be a very attentive father, as opposed to someone whose undiagnosed mental illness may negatively impact N.A.'s best interests.
- [94] As evidence of "extreme paranoia", the claimant additionally points to the respondent's trial testimony that he now believes the claimant, perhaps with the support of her family, always planned to marry and then separate from him in order to take his money. I unhesitatingly reject that the claimant went ahead with the marriage for this purpose. But I view the respondent's misplaced conclusion as to her motivation as the result of deep disappointment arising from the failure of the marriage, including its financial impact on him, as opposed to a sign of worrisome mental health struggles that may leach into other parts of his life.
- [95] As for the alleged symptoms of ADHD, the respondent candidly admitted telling the claimant that he might have such symptoms, but testified that he had not been formally diagnosed. The claimant has not provided me with any submissions, let alone evidence, as to why symptoms of ADHD, whatever those might be, would negatively impact the respondent's ability to parent N.A.
- [96] Finally, the claimant testified that the respondent was socially awkward, spent a lot of time working, and did not have a lot of friends. She called as a witness her uncle, a forensic psychiatrist in the United Kingdom, not as an expert, but to testify about finding the respondent to be socially awkward when they met at the couple's wedding in 2018 (e.g., not good at small talk; appeared anxious when the start of the wedding was delayed). Assuming for the sake of argument that this evidence is not impacted by bias, I reject that it materially detracts from the respondent's ability to parent N.A. in her best interests.

Communications Regarding Parenting

- [97] The parties currently spend little time together in N.A.'s presence, apart from parenting exchanges. For example, the claimant testified that the only occasions she had seen the respondent during his parenting time since January 2024 was for about an hour at N.A.'s first day of school in September 2024, and at the 2024 Christmas event described below.
- [98] By consent court order dated April 26, 2024, the parties are to communicate with each other by email and only with respect to N.A.
- [99] In chief, the claimant stated that 359 pages of emails found in one of her trial exhibits were exchanged between her and the respondent. She then testified that it is hard to communicate with the respondent about N.A.'s parenting because he sends very lengthy emails, sometimes repetitive and in close succession, in which he argues about everything and always tries to prove something. In providing this testimony, the claimant did not refer to any excerpts from the 359 pages of emails.

- [100] However, excerpts from these emails were the subject of lengthy cross-examination, the prelude to which saw the claimant disagree with the suggestion that the respondent was an attentive father. She also disagreed that the respondent would ask questions about N.A.'s well-being, stating that he simply accused her of saying things to N.A. She described the respondent as making assumptions and accusations, not asking questions.
- [101] Respondent's counsel then challenged the claimant's evidence on these points by cross-examining her on some multi-day email threads regarding parenting arrangements. During this cross-examination, the claimant in effect suggested that the emails or the larger context demonstrated that the respondent had been acting unreasonably. However, in my view she was unable to convincingly explain why this was so. At one point during this cross-examination, the claimant resorted to stating that these emails were "put in" by the respondent, not her, and did not include all of their conversations. In fact, the emails were filed as part of her case.
- [102] The claimant's counsel did not take me to any excerpts from this collection of emails in closing submissions, despite my suggestion that he do so if he wished to provide support for his client's testimony regarding the depth of difficulty she claimed to face in communicating with the respondent about parenting N.A.
- [103] I have since reviewed all 359 pages of emails. They demonstrate that both parties are genuinely concerned about N.A.'s well being. The communications are often what one would hope for from separated parents trying their best to cooperate about parenting arrangements (e.g., her guiding him through N.A.'s potty training). Sometimes the parties show kindness to one another, or share excitement about something that N.A. has done (e.g., the respondent's email about a prize N.A. had won).
- [104] Unfortunately, on other occasions the emails show the parties sniping at each other. Sometimes an email chain includes both sniping and cooperation, or even expressions of empathy. For example, in an email that arguably contains some sharp words, although it can be difficult to know for sure given the medium, the respondent tells the claimant, "I know you love and care for [N.A.] so much."
- [105] Importantly, the contents of these 359 pages prove unreliable the claimant's sweeping and unequivocal claim regarding the nature of the respondent's communications with her about parenting matters. They also undermine her claim that the respondent is not an attentive parent. The emails show him to be exactly the opposite; i.e., a very attentive and loving parent.
- [106] I am not suggesting that the claimant was intentionally misleading in giving evidence to the contrary. Nor am I suggesting that the respondent has never been unreasonable or sent a lengthy email in respect of parenting matters.

- [107] But in my view the claimant's evidence on this point reflects the human tendency to occasionally unconsciously reconstruct history in a way that favours a desired outcome or is coloured by past events, in this case the respondent's sometimes abusive treatment of her during their marriage: *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10.
- [108] In coming to this conclusion, I recognize that these 359 pages do not contain all of the parties' communications about parenting arrangements. They also communicated about such matters through their lawyers, and prior to late April 2024 did so by text or phone as well. Nonetheless, the emails constitute the main independent evidence regarding communications about parenting matters. Given their volume and the lengthy time span covered, I am confident that the emails provide a good representation of the nature of these communications between the parties.

Current Parenting Regime

- [109] As a stay at home mother, prior to separation the claimant spent much more time with N.A. than did the respondent. And as described above, after separation she remained N.A.'s primary caregiver, although the respondent's parenting time has gradually increased and he currently parents N.A. for two overnights per week.
- [110] As N.A.'s primary caregiver, the claimant has been and continues to be significantly involved in N.A.'s care and activities. The claimant has enrolled her on a regular basis in gymnastics, piano and swimming, and takes her to other activities such as ballet and skating, although not as often. The claimant is also very involved with N.A.'s interactions with friends. The claimant's testimony and emails show that she is very interested and involved in N.A.'s scholastic and healthcare matters.
- [111] The respondent did not play a significant role in N.A.'s daily care prior to separation. In his testimony, he gave the example of not changing her diapers during this period, and in his September 7, 2021 email to the claimant he apologized for not helping much at home following N.A.'s delivery.
- [112] However, the respondent testified that once he began to exercise post-separation parenting time, when N.A. was about 20 months old, he did everything relevant to her care by himself, and as she grew up he learned how to brush her hair, buy the clothing that she likes and so on. The respondent testified about and presented photographs of N.A.'s bedroom and playroom with toys and crafts in his townhouse.
- [113] The respondent described his parenting time in genuinely and palpably enthusiastic terms, for example when recounting the things he and N.A. talk about. On Tuesdays they go to his sister's house after he picks her up at 5:00 p.m. On Wednesday morning he drops her off at preschool at 8:30 a.m., and then picks her up at 12:00 p.m., often getting feedback from her teacher. He will then provide N.A. with lunch before taking her to the exchange location so that the claimant can resume parenting at 2:30 p.m.

- [114] The respondent explained how, prior to N.A. starting to attend preschool on Wednesday mornings, he stopped working on that day so he could exercise his parenting time. Once she started preschool at that time, he worked at home on Wednesday mornings during the school year, but took that time off work during school breaks and in the summer.
- [115] After picking N.A. up from the claimant for Friday parenting time, the respondent previously took her to gymnastics, but N.A. no longer attends that class, so they usually get some food and might play in the park. The respondent then takes N.A. to Sunday school, which runs from 7:00 until 8:30 p.m., where she meets other children. He puts her to bed at 10:00 p.m.
- [116] The respondent testified that N.A. wakes up at about 8:00 a.m. on Saturdays. He previously took her to soccer and basketball starting at 9:00 a.m., but more recently has been taking her to tennis, which he plays as well. They typically go on other outings on Saturdays, whether it be Science World, the Vancouver Aquarium, the Langley zoo, or indoor activity centres or outdoor playgrounds. He gets N.A. dinner before taking her to the Saturday evening parenting exchange.
- [117] I was struck by how animated the respondent became when testifying about N.A.'s role in a Church nativity play in December 2024. He is clearly very proud of N.A., and talked about how well she had done memorizing her lines, and how he and the claimant had both helped her to do so. He is interested in N.A.'s career prospects and has started an RESP for her university education that currently contains about \$10,000.
- [118] The exchange on either side of the Tuesday overnight is at a community centre in the Lower Mainland. The exchange on either side of the Friday overnight is at a different community centre.
- [119] The claimant and N.A. live in a townhouse close to N.A.'s preschool and future kindergarten. The respondent lives in a townhouse in Surrey. He chose the area after the sale of former family home because it is close to N.A.'s school, the exchange locations, his church and his sister's house.
- [120] In their testimony, both parties described N.A. in glowing and loving terms, as a mostly friendly, happy and social five-year-old. They clearly care for N.A. deeply and are committed to her well-being.
- [121] The claimant nonetheless testified that N.A. began struggling with the current parenting schedule in October 2024, stating that N.A. said she did not want to see the respondent and that he scares her a lot. The claimant recounted that N.A. has asked why she should go to her father's, what will happen if she never goes again, and states that she has nightmares there. N.A. will sometimes hide or give excuses, such as being sick or tired, when the respondent is about to have his parenting time. The claimant indicated that N.A. expresses reluctance of some sort before every single exchange.

- [122] The claimant testified in detail about a specific incident, at the Christmas 2024 nativity play, which took place during the respondent's parenting time but at which, after seeing the claimant in attendance, N.A. wanted to sit in church and go home with the claimant rather than the respondent.
- [123] The claimant also testified that N.A. often comes back from the respondent's care sad and very tired, and needs to sleep, and when she asks how N.A. is feeling, N.A. will say she is upset but is reluctant to describe why. Initially in cross-examination, the claimant stated that it took one or two days for N.A. to return to her normal self, by which time she was going back to the respondent's care, which undermined her stability. But on further cross-examination, the claimant essentially said that N.A. was mostly back to her adjusted self by the next day.
- [124] The claimant's mother has visited Canada five times since the separation, including in 2023 and 2024, and gave evidence similar to the claimant about N.A. expressing a reluctance to participate in parenting time with the respondent and appearing tired or out of sorts after that parenting time concluded.
- [125] The claimant's younger sister, M.B., who has visited Canada four times since the separation, testified that when N.A. returns from parenting time with the respondent she is quiet and lacks her usual energy, and on one occasion during a six-week visit in late 2024 N.A. asked the claimant to promise not to take her to see the respondent and said that he makes her sad.
- [126] E.Y. is a neighbour and close friend of the claimant who sees N.A. about twice per week. She testified that on a couple of Wednesdays following parenting time with the respondent, N.A. did not want to talk to her and was "not in her mood".
- [127] Another neighbour and close friend of the claimant's, Y.N., who lives on the same street and sees N.A. two or three times every week, including at play dates with her twins, testified that since January 2024 she has noticed N.A. becoming angry and crying at certain times, especially or usually when coming back from the respondent's care. Y.A. added that a few days prior to her testifying N.A. was going for parenting time with the respondent and said that she was sad to go to her dad's.
- [128] The claimant's best friend, M.I., who lives in the United States, testified that she often communicates with N.A. by video and that N.A. has told her multiple times that she does not want to see the respondent for parenting time, including once in March 2025.
- [129] Another good friend of the claimant's, A.B., testified that on Saturdays she is at a community centre for her own children's activities when the respondent drops N.A. off after parenting time, and that N.A. seems sad and upset, is sometimes crying and wants to go home with the claimant right away.

- [130] The claimant further testified that on the first occasion when parenting time increased, and also when it increased in March 2024, N.A. experienced problems with incontinence, and a couple of months ago started grinding her teeth. The claimant further recounted that in May and June 2024, a teacher at the preschool informed her of a few incidents involving aggressive behaviour by N.A., which was atypical. The claimant testified that this was only the period during which the respondent was dropping N.A. off at preschool and she was picking up N.A. afterwards. But she agreed that since this two-month period all reports or feedback from N.A.'s preschool had been positive.
- [131] The claimant testified that, for these reasons, she is worried that the respondent is treating N.A. the same way he treated her during the marriage, isolating and controlling N.A. in a manner that will negatively impact N.A. She wants N.A. to have a relationship with the respondent, but also wants to figure out why N.A. is acting in these ways. Until that happens, the claimant does not want the respondent to have any overnight time with N.A., but testified that if N.A.'s circumstances change she is open to increasing his parenting time.
- [132] For his part, the respondent testified that, apart from some difficulties in 2021 and early 2022, N.A. is happy to see him at the start of their parenting time, waving at or running towards him and giving him a hug. He was not challenged on this point, and the claimant did not testify to the contrary regarding N.A.'s demeanour at the exchanges. The respondent testified that N.A. is usually very happy to see the claimant when the exchange is in the opposite direction.
- [133] The respondent generally agreed with the claimant's description of the incident at the 2024 nativity play, but added that afterwards N.A. explained that the claimant had told N.A. that if she went with the respondent he would take her to basketball and soccer the next day, which were activities for boys, not girls. While N.A. may have said something like this to the respondent, I doubt that it accurately conveyed sentiments expressed to N.A. by the claimant.
- [134] The respondent's sister M.H. and brother-in-law M.F. testified that he brings N.A. to their house most Tuesday evenings during the school year, and that N.A. has a close relationship with them and their 10-year-old daughter. M.H. also spends time with the respondent and N.A. in other contexts, such as at the park or indoor play areas. Both M.H. and M.F. testified that, based on their observations, the respondent and N.A. appear to have a close and loving relationship.
- [135] As mentioned, since March 2024 N.A. has been attending Sunday school for 90 minutes every Friday night. The respondent brings her to and picks her up from the class. Two of N.A.'s Sunday school teachers, S.K. and J.S., testified that they see N.A.'s interactions with the respondent before and after class, and N.A. is cheerful on arriving and is happy and excited to see the respondent after class. They described N.A.'s participation and demeanour during class in very positive terms: she is smiling, answers questions and

listens as appropriate, and the only time she expressed sadness was in recounting how she used to live in a big house and did not have siblings.

- [136] I accept that on occasion N.A. has expressed reluctance to go to parenting time with the respondent, and has sometimes been tired or cranky upon returning from that parenting time. However, I doubt that this has occurred on every occasion, and do not accept that it establishes that the respondent is likely acting contrary to N.A.'s best interests during parenting time.
- [137] To begin with, and most importantly, the Sunday school teachers S.K. and J.S. see N.A. on a weekly basis shortly after N.A. starts her parenting time with the respondent. Their testimony about N.A.'s interactions with the respondent and her demeanour during class is inconsistent with that parenting time being a source of upset for her. The testimony of J.S. is especially important in this regard, because I find her to be independent of either party and have no concerns about her credibility or reliability.
- [138] The claimant's exaggerations regarding the nature of her communications with the respondent about parenting matters, already described above, provide another reason why I am not prepared to accept that N.A. routinely expresses reluctance to see the respondent in advance of his parenting time or is invariably sad or out of sorts after returning to the claimant's care. I also have a concern that the claimant is unconsciously putting a gloss on these interactions with N.A. so as to present the respondent in a bad light. Even then, in her testimony the claimant accepted that she was unable to say why N.A. was expressing the reported reluctance to spend time with the respondent.
- [139] The testimony of the claimant's own witnesses is also arguably inconsistent with her evidence that N.A. always expresses reluctance to see the respondent in advance of a parenting exchange. Regardless, I have concerns that some of her witnesses may be exaggerating the frequency or nature of N.A.'s comments prior to parenting time with the respondent. I will provide three examples.
- [140] First, the claimant's mother clearly dislikes the respondent, as demonstrated at the end of her testimony when she launched into a very lengthy description of how she felt the respondent had drastically upended her family's life since he became engaged to the claimant. I have no doubt that these sentiments are genuinely felt, but they demonstrate an animus against him.
- [141] Second, the respondent's friend A.B., mentioned above, described the Sunday school teachers S.K. and J.S. as best friends of the respondent's sister, yet I find that this description is inaccurate, most especially with respect to J.S. This finding leads me to have some concern regarding A.B.'s reliability in describing N.A.'s demeanour during child exchanges at the community centre.

- [142] Third, when the claimant's neighbour and close friend E.Y. was asked if she had ever seen the claimant and N.A. together, she did not simply answer the question but gave a lengthy description of the claimant's amazing abilities as a mother and how she wished she could be that attentive to her own children's needs. Interestingly, E.Y. testified that N.A. appeared out of sorts on Wednesdays but did not mention making the same observations on Saturdays, the other day on which N.A. returns from parenting time with the respondent. E.Y. did not suggest that she only saw N.A. on Wednesdays.
- [143] To be clear, I am not finding that these witnesses were trying to mislead the court, but rather that to varying extents they appear predisposed to assist the claimant's position in the litigation, which causes me to have a concern that they may be unconsciously exaggerating aspects of their testimony.
- [144] A young child may express reluctance to switch parenting time for reasons that do not arise from parenting deficiencies on the part of the transferee. In the particular circumstances of this case, I am unable to conclude that N.A.'s statements or demeanour justifies the inference that the respondent is parenting in a manner contrary to her best interests. N.A. may well simply wish to remain with the claimant as her primary caregiver in that moment. Or N.A. may be seeking to please the claimant after having picked up on tensions between her parents that have arisen as a result of the breakdown in the marital relationship.
- [145] As for N.A.'s reported demeanour after parenting time with the respondent, elsewhere in her testimony the claimant suggested that N.A.'s tiredness arises because she engages in a full schedule of activities with him. The respondent's testimony about his activities with N.A. supports this conclusion. N.A.'s purported sadness or crankiness may well be the result of fatigue.
- [146] In sum, I do not infer from N.A.'s statements and other behaviour that the respondent is controlling or isolating N.A., or taking other actions, so as to negatively impact her best interests.
- [147] The claimant also testified about N.A. making statements that suggested the respondent had made derogatory comments to N.A. about the claimant and the claimant's family.
- [148] For example, the claimant testified that in late 2023, N.A. told her that the respondent had said that the claimant broke N.A.'s family and that the claimant and her family are not N.A.'s family anymore. N.A. has also asked why the claimant left the respondent, and stated that the respondent is lonely and has asked the claimant to promise never to leave him. The claimant also recounted that N.A. told her that she left and no longer loves the respondent, and is stealing his furniture. The latter comment appears to have been made when the former family home was sold in June 2024.

- [149] The claimant also testified that the respondent has given N.A. spousal and child support cheques to pass on to her and that N.A. stated that this is the money the respondent gives to the claimant.
- [150] The respondent denied making derogatory comments about the claimant or her family to N.A. In cross-examination, he testified that N.A. had told him that the claimant or her mother made somewhat similar derogatory comments about him or his family.
- [151] The respondent testified that at child exchanges he often returns clothes N.A. has been wearing after washing them, and puts an envelope with child and spousal support in the bag of clothing. If there are no clothes to return, he will hand the check to the claimant. But he testified that sometimes N.A. will ask to give the claimant the envelope herself, and in response to a question from N.A. he told her that this is money "bubba" gives to the claimant to help pay N.A.'s expenses.
- [152] Having considered the parties' evidence, as well as the evidence of some of their witnesses, I find it more likely than not that N.A. has made the comments attributed to her by the claimant. It is quite possible that some of these comments do not directly reflect what she has been told by the respondent, but rather include her own suppositions. Nonetheless, I think it probable that the respondent has on occasion made comments to or in front of N.A. that conveyed his resentment towards her mother and her mother's family.
- [153] Given my concerns about the respondent's credibility, and the absence of any independent corroborating evidence, I am not prepared to find on a balance of probabilities that the claimant or her family members have done the same. But it is possible that they have done so, even if only unconsciously.

Applicable Statutory Regime

- [154] Whether to grant a divorce is governed exclusively by the Divorce Act. However, the Divorce Act also permits a court to make orders on issues corollary to divorce such as parenting matters and child and spousal support. These corollary issues can also be addressed under the FLA. Unlike the Divorce Act, the FLA also permits orders addressing the division of family property and debt.
- [155] In their pleadings, the parties seek orders under both the Divorce Act and the FLA. Neither party suggests that there are any operational inconsistencies between the two statutes that, on the facts of this case, would engage the paramountcy doctrine in favour of the Divorce Act. I agree.
- [156] Given that the parties focussed somewhat more on FLA terms and provisions in their closing submissions, some of which have no analogue in the Divorce Act, I will generally do the same in these reasons except regarding the non-contentious issue of divorce, and will apply the FLA to all matters except divorce. See *C.L.D. v. J.J.P.D.*, 2024 BCSC 1123 at paras. 8-21; *K.M.N. v. S.Z.M.*, 2024 BCCA 70 at paras. 63-64.

Divorce

[157] Both parties seek a divorce in their pleadings.

[158] The evidence supports making the requested order. The parties are residents of British Columbia, their marriage has broken down and there is no possibility of reconciliation. They have lived separate and apart since August 23, 2021. There is no collusion in relation to the request for a divorce. As explained below, I have made appropriate arrangements pertaining to N.A.'s parenting.

[159] I am thus granting the parties a divorce effective on the 31st day after the date of my order.

Parenting Issues

[160] To recap, at the time of the trial the parties shared joint guardianship and parental responsibilities for N.A. While the claimant remains N.A.'s primary caregiver, since March 1, 2024 the respondent has exercised parenting time for two overnights per week, from Tuesday at 5:00 p.m. until Wednesday at 2:30 p.m., and from Fridays at 5:00 p.m. until Saturdays at 7:00 p.m.

[161] The parties agree to continue the arrangements for guardianship and parental responsibilities. But neither party is satisfied with the current parenting time arrangements.

[162] The claimant seeks to reduce the respondent's parenting time to two weeknights, for three hours each, and one weekend day for eight hours, with the proviso that after six months of counselling for N.A. either party is at liberty to apply to review the parenting schedule. The claimant also seeks orders appointing a parenting coordinator for 24 months, and for co-parenting counselling for the parties.

[163] The respondent opposes any reduction in his parenting time, and instead asks that his time with N.A. be increased from two to three overnights per week, on Tuesdays at 2:30 p.m. until Thursdays at 2:30 p.m., and on Fridays at 2:30 p.m. until Saturdays at 7:00 p.m. In effect, he seeks an order for equal parenting time. The respondent opposes the appointment of a parenting coordinator or counselling for N.A., but is open to co-parenting counselling with the claimant. He also seeks an order limiting the claimant's ability to travel with N.A. to Egypt.

[164] In resolving these issues, I will start by setting out some general legal principles regarding parenting arrangements. I will then comment on the factors bearing on N.A.'s best interests. After that, I will explain my conclusions, including regarding parenting time, the advisability of appointing a parenting coordinator and making orders for counselling, and whether the claimant should be permitted to travel to Egypt with N.A.

Legal Principles Regarding Parenting Arrangements

- [165] Section 39 of the FLA provides that where a child's parents are living together and after they have separated, each parent is the child's guardian. Only a guardian may have parental responsibilities and parenting time with respect to a child: s. 40(1) FLA.
- [166] Pursuant to s. 1 of the FLA, the allocation of "parental responsibilities" and "parenting time" falls under the rubric of "parenting arrangements". To similar effect, see the concepts of a "parenting order", "decision-making responsibility" and "parenting time" used in s. 2(1) of the Divorce Act.
- [167] Section 1 of the FLA defines "parental responsibilities" to mean one or more of the responsibilities listed in s. 41. The list in s. 41 is as follows:
- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
 - (b) making decisions respecting where the child will reside;
 - (c) making decisions respecting with whom the child will live and associate;
 - (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
 - (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;
 - (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
 - (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
 - (h) giving, refusing or withdrawing consent for the child, if consent is required;
 - (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - (j) requesting and receiving from third parties health, education or other information respecting the child;
 - (k) subject to any applicable provincial legislation,
 - (i) starting, defending, compromising or settling any proceeding relating to the child, and
 - (ii) identifying, advancing and protecting the child's legal and financial interests;
 - (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

- [168] Parental responsibilities as defined in the FLA are akin to the concept of decision-making responsibility used in s. 2(1) of the Divorce Act: R.T.C. v. N.M.C., 2021 BCSC 2273 at para. 64.
- [169] Ordinarily, each child's guardian may exercise all parental responsibilities with respect to the child, in consultation with the child's other guardians, unless consultation would be unreasonable or inappropriate in the circumstances: s. 40(2), FLA. However, an agreement or court order may depart from this default position so as to allocate parental responsibilities such that they may be exercised only by a particular guardian, or by each guardian acting separately or all guardians acting together: ss. 40(3) and 45, FLA. See also s. 16.3, Divorce Act.
- [170] "Parenting time" means the time a child is with a guardian, as allocated under an agreement or court order: ss. 1, 42(1) and 45, FLA. See also s. 2(1), Divorce Act.
- [171] During parenting time, a guardian may exercise the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child, subject to an agreement or order providing otherwise: s. 42(2), FLA. See also s. 16.2(2), Divorce Act.
- [172] In making an order for parenting arrangements, the court must consider only the best interests of the child: s. 37(1), FLA. See also s. 16(1), Divorce Act.
- [173] Pursuant to s. 37(2) of the FLA, in determining what is in the best interests of the child, all of the child's needs and circumstances must be considered, including:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;

- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [174] The factors bearing on a child's best interests in s. 37(2) of the FLA are similar to the factors set out in ss. 16(3) and (4) of the Divorce Act: *T.K.H. v. M.D.H.*, 2022 BCSC 1986 at para. 63.
- [175] An agreement or order is not in a child's best interests unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: s. 37(3), FLA. See also s. 16(2), Divorce Act.
- [176] Furthermore, in making an order concerning parental arrangements a court may consider a person's conduct only if it substantially affects one of the factors set out in s. 37(2), and only to the extent that it affects that factor: s. 37(4), FLA. See also s. 16(5) of the Divorce Act, which although arguably more permissive in its wording is not likely to give rise to a different result, given that both statutes focus on the best interests of the child: *T.K.H.* at para. 66.
- [177] Under the FLA, there is no presumption that any particular allocation of parental arrangements is in a child's best interests. For instance, it must not be presumed that parental responsibilities or parenting time should be allocated or shared equally among guardians. See s. 40(4), FLA.
- [178] Section 16(6) of the Divorce Act does not depart from this proposition, at least not in any way that would materially impact the analysis in the case at bar, for it states that, in allocating parenting time, "the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child" (emphasis added). Under the Divorce Act, the child's best interests thus remain the determining factor for the allocation of parenting time: *T.K.H.* at para. 54; *M.W. v. N.L.M.W.*, 2021 BCSC 1273 at paras. 95-98.
- [179] As noted, ss. 37(2)(g) and (h) of the FLA provide that a determination of a child's best interests includes assessing the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed at the child or another family member, and also includes assessing whether the actions of a person responsible for family violence may impair that person's ability to care for the child and meet the child's needs.
- [180] "Family violence" is defined broadly in s. 1 of the FLA to include both physical and psychological/emotional abuse of the family member and, in the case of the child, direct or indirect exposure to family violence. More specifically, s. 1 defines family violence to include, "with or without an intent to harm a family member":

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence;

[181] Section 38 of the FLA provides that, in applying ss. 37(2)(g) and (h) as part of determining a child's best interests, a court must consider:

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

[182] Sections 2(1), 16(3)(j) and 16(4) of the Divorce Act are similar to ss. 1, 37(2)(g) and (h) and 38 of the FLA regarding the definition and consideration of family violence in assessing a child's best interests. Given that the FLA provisions have been in effect for a longer period of time, the jurisprudence that has developed under the provincial legislation is helpful in interpreting the family violence provisions in both statutes: M.W. at para. 105.

- [183] In assessing allegations of family violence, a court must start by determining whether and to what extent the allegations have been proven, after which the court must consider whether any family violence found to have occurred substantially affects or at least is relevant to one of the factors listed s. 37 of the FLA or s. 16 of the Divorce Act: M.W. at paras. 106-107.
- [184] In undertaking this assessment, a court must avoid using "myths and stereotypes", sometimes referred to as "preconceptions", in the form of faulty assumptions that are linked to disadvantaging beliefs, attitudes and narratives. Examples of such flawed thinking include the assumptions that: (i) women falsely allege violence in family law proceedings to gain an upper hand in litigation; and (ii) violence by one party against the other has no impact on a child and nothing to do with the perpetrator's parenting ability. See K.M.N. at paras. 84, 110-111, 120-126.
- [185] As indicated by the expansive definitions in the FLA and Divorce Act, family violence can take many forms and does not only mean physical violence. A review of the multitude of behaviours that may fall within the ambit of family violence is set out in R.W. v. P.C., 2017 BCSC 998 at paras. 36-41. See also A.K.P. v. I.S.P., 2024 BCSC 645 at para. 37.

History of N.A.'s Care

- [186] The claimant has been N.A.'s primary caregiver since birth, taking on that role as a stay-at-home parent both before and after the parties' separation in August 2021.
- [187] Prior to separation, the respondent as a busy medical practitioner played a significantly lesser role in N.A.'s care. After separation, at which point N.A. was about 19 months old, the respondent had three hours of parenting time twice per week, which has gradually increased over time. Since March 2024, he has had two overnights per week of parenting time with N.A.

N.A.'s Health, Emotional Well-Being and Need for Stability

- [188] By all accounts, N.A. is an intelligent, social and generally happy child, who has a circle of friends and is involved in multiple extracurricular activities. As with any young child, N.A. will benefit from stability including with respect to parenting arrangements.

Nature and Strength of Relationship Between N.A. and Significant Persons in Her Life

- [189] The evidence establishes that N.A. has close and strong bonds with each party, and also with members of their respective families. However, the strength of N.A.'s bond with the claimant is probably more pronounced, given that the claimant has always been her primary caregiver.

N.A.'s Views Unless it would be Inappropriate to Consider Them

- [190] As explained earlier, I am not prepared to find that N.A.'s occasional expressions of reluctance to attend parenting time with the respondent, or her sometimes having lower energy on returning from that parenting time, allow for the inference that the respondent is or may well be parenting N.A. in a manner contrary to her best interests.
- [191] For this reason, which includes consideration of her young age, I give limited weight to the views of N.A. in assessing her best interests. See *K.H.D. v. O.O.M.*, 2021 BCSC 1808 at paras. 3, 63; *D.L.R.A. v. S.K.C.*, 2018 BCSC 1472 at paras. 1, 114; *C.C.B. v. A.V.B.*, 2024 BCSC 1340 at paras. 1, 19; *K.J. v. A.R.*, 2018 BCSC 1223 at para. 32(b).
- [192] That said, I am not prepared to ignore N.A.'s comments and demeanour in this regard, and will return to this topic later in these reasons.

Ability of Each Party to Exercise Parental Responsibilities

- [193] I have no concerns regarding the claimant's ability to exercise parental responsibilities in relation to N.A. The evidence establishes that she is a fully engaged and nurturing parent, and the respondent does not argue otherwise.
- [194] I will address the respondent's family violence below, but leaving that issue aside for the moment, I am satisfied that the respondent has over a significant period of time been a dedicated and conscientious parent to N.A. I accept his evidence that, while he had more limited involvement in N.A.'s care prior to the parties' separation, that has changed post-separation, and over time he has taken on a significant care-giving role. He arranges his work schedule around his parenting with N.A., and is engaged N.A. whenever she is in his care.
- [195] I have already considered and rejected the claimant's submission that the respondent's ability to parent may be negatively impacted by mental health issues.
- [196] The claimant also expressed concern that N.A. is isolated when with the respondent because he has no friends with children, and the only child they see is N.A.'s 11-year-old cousin. By contrast, the claimant says that while in her care N.A. frequently spends time with other children her own age.
- [197] In his testimony, the respondent was open about not having a large circle of friends. It may be that he is at times shy. But there is no indication that he either intentionally or unconsciously isolates N.A. so as to deprive her of contact with others, including children her own age. To the contrary, the respondent takes N.A. to Sunday school every week, and he has also enrolled her in extracurricular activities involving other children. The respondent and N.A. also see his sister's family every week during the schoolyear.

[198] While N.A. has more contact with children her own age while in the claimant's care, this does not mean that the respondent is unable to parent N.A. in a manner conducive to her best interests, and I am not prepared to make this finding on the evidence before me.

Consideration of Family Violence

[199] I will consider together the factors related to family violence set out in s. 37(1)(g) and (h) of the FLA.

[200] In doing so, I recognize that, while a court may be unable to reach factual conclusions as to what transpires while the child is in a parent's care, the best interests of the child are promoted and protected by orders that contemplate the real and substantial risks to the child's safety, security and well-being, in respect of both the possibility of the risk under consideration actually existing or becoming manifest, with the potential for resulting harm to the child, and the risk of possibly harming the child's interests by making an order that is too broad: *N.D.T. v. T.F.T.*, 2016 BCSC 134 at para. 103.

[201] I have already discussed and made findings regarding the physical and psychological or emotional family violence committed by the respondent against the claimant.

[202] To recap without purporting to be exhaustive, prior to separation the respondent was frequently verbally abusive to the claimant, and engaged in some physical abuse. In addition, there was a period of time, fairly early in the post-separation period, where the respondent became frustrated with the claimant in connection with N.A.'s understandable fussiness at parenting exchanges, leading him to berate her in front of N.A.

[203] There is no suggestion, nor do I find, that the respondent has ever been physically or verbally abusive of N.A. But he was physically and verbally abusive of the claimant in N.A.'s presence. Despite her very young age at the time, I do not accept that this misconduct had no negative impact on her: *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 143, 146.

[204] However, in my view concerns about the respondent's family violence and its impact on N.A. have been almost entirely ameliorated by the end of the parties' relationship combined with the passage of time. I am therefore satisfied that no further incidents of family violence will occur against the claimant, and that any negative impact of the family violence on N.A. has long since dissipated. See *K.L.B. v. S.W.B.*, 2021 BCSC 1437 at paras. 127-133.

[205] I nonetheless remain somewhat concerned that the respondent lacks full insight into the family violence he perpetrated on the claimant. For example, as discussed earlier in these reasons, he denies some of that misconduct, and in hindsight believes the claimant married him for his money and never intended to remain in the marriage.

[206] I do not perceive that this lack of full insight into family violence reflects a character trait that would cause the respondent to be abusive or unduly controlling in parenting N.A.

[207] But the respondent's limited insight has accentuated his resentment towards the claimant, which I find has contributed to friction in co-parenting with the claimant, and has also led him to sometimes make comments in N.A.'s presence that convey this resentment. Both of these things raise a potential for harm to N.A., which I will address further below.

Appropriateness of an Arrangement Requiring Parties to Cooperate on Issues Affecting N.A.

[208] I have already addressed and made some findings regarding the parties' efforts at cooperating on issues affecting N.A.

[209] The numerous emails filed in evidence show that the parties can be civil and cooperative in communicating about N.A.'s care and activities. Those the emails provide me with some optimism that the parties will be able to improve their communications in the future, especially if they are provided with assistance such as through co-parenting counselling. The emails also convince me that the respondent usually does not allow his resentment towards the claimant to disrupt the co-parenting endeavour.

[210] At the same time, I recognize that the parties' relationship has seen high conflict at different periods, not only prior to separation but also during post-separation, including when they were exploring the possibility of reconciliation. The above-mentioned emails provide illustrations of that conflict. And at trial, each party suggested that the other was or could be intransigent about parenting arrangements.

[211] Topics on which the evidence suggests such intransigence, or at least challenges in reaching a consensus, include but are not limited to: modifying parenting time to accommodate the parties' own or N.A.'s schedules; exchange locations; being on time for exchanges; selecting and/or communicating about N.A.'s extracurricular activities; and managing N.A.'s health care when an illness straddles a parenting exchange.

[212] In my view, the parties will therefore benefit from assistance in cooperating regarding N.A.'s parenting arrangements, a topic I will expand upon in the next section of these reasons.

Determinations Regarding Parenting Arrangements

[213] The parties agree that they should both remain N.A.'s guardians by operation of s. 39 of the FLA. That is, neither of them seeks an order pursuant to s. 39(2) divesting the other of guardianship.

[214] The parties also agree that each of them should exercise parental responsibilities equally with respect to N.A. They further agree that there is no reason to depart from the default position set out in s. 40(2) of the FLA, which is that, absent an agreement or order to the contrary, each guardian may exercise these parental responsibilities in consultation with the other guardian, unless consultation would be unreasonable or inappropriate in the circumstances.

- [215] I accept the parties' submission that maintaining the status quo with respect to guardianship and parental responsibilities is in N.A.'s best interests.
- [216] In carrying out these responsibilities, each party will have an obligation to advise the other of any matters of a significant nature affecting N.A. They will also have an obligation to discuss with one another any significant decisions that have to be made concerning N.A., and to try to reach agreement on those decisions.
- [217] Turning next to parenting time, in my view keeping the current arrangements under which the claimant is N.A.'s primary caregiver, and the respondent has parenting time for two overnights each week, is most conducive to N.A.'s best interests.
- [218] This arrangement has several stabilizing benefits for N.A., including maintaining the claimant as her primary caregiver and not changing the parenting schedule. These considerations are more important than would otherwise have been the case given the lingering concern that N.A. sometimes finds parenting transitions difficult, as reflected in her comments and demeanour as observed by the claimant and some of her witnesses.
- [219] I also have a concern that comments made by the respondent in N.A.'s presence conveying resentment towards the claimant may at some level be causing N.A. distress. At the very least, these comments must stop because they carry a real risk of adversely impacting N.A.'s best interests.
- [220] These concerns are not, however, significant enough for me to conclude that it is in N.A.'s best interests to reduce the respondent's parenting time. To the contrary, the reduction in his parenting time sought by the claimant, involving three exchanges per week, would increase instability in N.A.'s life. It would also create an undue risk of harming her relationship with the respondent, contrary to her best interests, even if, as suggested by the claimant, he is permitted to review the parenting time arrangements within six months of this order.
- [221] In coming to this conclusion, I harken back to my findings that over the last several years N.A. has developed a solid and loving bond with the respondent, that he is an attentive and caring parent, that there is no real risk of family violence occurring in the future, and that the family violence that has occurred does not lead me to conclude that the respondent may be abusive or unduly controlling or isolationist in parenting N.A.
- [222] The appropriate balance is therefore struck by maintaining the current parenting time arrangements but with some adjustments intended to address the concerns I have identified. I will now outline those adjustments.
- [223] First, pursuant to s. 222 of the FLA, I am making a conduct order that each party:
- (a) will encourage N.A. to have a good relationship with the other parent and speak to N.A. about the other parent and that other parent's family members in a positive and respectful manner;

- (b) will make a real effort to maintain polite, respectful communications with the other parent, refraining from any negative or hostile criticism, communication or argument in front of N.A.;
- (c) will encourage their family members to refrain from making any negative comments in front of N.A. about the other parent and that other parent's family members, or any comments pertaining to this family law litigation;
- (d) will not discuss with N.A. any inappropriate adult, court or legal matters;
- (e) will not involve N.A. in arrangements regarding the payment of child or spousal support; and
- (f) will not blame, criticize or disparage the other parent to N.A.

[224] Second, both parties are open to co-parenting counselling. I am therefore making an order for co-parenting counselling for the parties by a psychologist or registered clinical counsellor under s. 224 of the FLA. This order is justified in the best interests of N.A., not only because the parties have a history of significant conflict, and still face challenges in cooperating with respect to child care arrangements, but also because the respondent exhibits resentment towards the claimant and has made comments in N.A.'s presence that convey this sentiment.

[225] Following the approach taken in *Cosper v. Bauer*, 2021 BCSC 985 at para. 27, and *Y.S. v. K.R.C.*, 2024 BCSC 1473 at para. 186, the retainer of the psychologist or registered clinical counsellor for co-parenting counselling will occur on the following terms:

- (a) If the parties are unable to otherwise agree on which counsellor is to be retained, the selection will be made by the claimant providing the respondent with the names of three psychologists or registered clinical counsellors who are willing and available within a reasonable time to work with the parties, and the respondent will promptly choose one name from that list.
- (b) The parties will attend at least six and, subject to the direction of the counsellor, up to twelve sessions of counselling.
- (c) The cost of each counselling session will be borne by the parties in the same proportion as is then being used to determine their respective share of section 7 expenses.
- (d) All communications with the counsellor, other than routine communications as to the retainer and scheduling appointments, will remain confidential, with the exception that each party may waive the confidentiality of communications with the counsellor as to only their own treatment, including but not limited to their completion of any therapy, exercises, or treatment prescribed, recommended or administered by the counsellor, and in the event that one party chooses to waive such confidentiality no adverse inference will be drawn should the other party choose to maintain their own right of confidentiality.

- (e) The counsellor shall be provided with a copy of these reasons and the entered order reflecting these reasons.
- [226] Third, I am acceding to the claimant's request that N.A. attend counselling with a psychologist or registered clinical counsellor pursuant to an order made under s. 224 of the FLA.
- [227] I am satisfied that counselling is in N.A.'s best interests given that she appears to be experiencing some anxiety or distress with respect to parenting exchanges. The focus of the counselling should be on this or any other anxiety or distress experienced by N.A., and more generally on the impact on N.A. of any matters related to her parents' family law dispute.
- [228] While I agree with the respondent that N.A. is for the most part an energetic, vivacious and happy child, and it is quite possible that her anxiety or distress is caused only by the prospect of moving from one household to the other, perhaps combined with physical fatigue on returning from his residence, these are not reasons to forego the assistance that counselling may provide, in particular given that these transitional issues appear to have occurred over a lengthy period of time.
- [229] The following terms will apply to N.A.'s counselling:
- (a) If the parties are unable to otherwise agree on which counsellor is to be retained, the selection will be made by the claimant providing the respondent with the names of three psychologists or registered clinical counsellors who are willing and available within a reasonable time to work with N.A., and the respondent will promptly choose one name from that list.
 - (b) The counsellor is at liberty to determine the frequency and duration of counselling meetings so as to align with N.A.'s best interests.
 - (c) Neither party is to have any communication with N.A. about any counselling session in the absence of the counsellor.
 - (d) The cost of each counselling session will be borne by the parties in the same proportion as is then being used to determine their respective share of section 7 expenses.
- [230] Fourth, I agree with the claimant that the appointment of a parenting coordinator under ss. 14-19 of the FLA is justified.
- [231] When combined with the above-mentioned co-parenting counselling, a parenting coordinator will help the parties build consensus and make determinations. Disputes can be resolved more quickly and economically, without the need for judicial intervention. See s. 17, FLA; J.R.V. v. N.L.V., 2025 BCSC 1137 at paras. 28-29, 32-35; J.M. v. S.T., 2022 BCSC 1210 at para. 69.

- [232] I come to this conclusion because there has been a history of conflict and animosity between the parties, and the emails I have reviewed, as well as some of the other trial evidence, indicates that the parties have at times struggled to communicate in a civil manner and their inability to reach a consensus has sometimes led to a stalemate regarding parenting arrangements.
- [233] I reject the respondent's submission that a parenting coordinator may create a source of further conflict because the parties may use that coordinator as a tool to express their frustration with each other. Having listened to the claimant testify, I believe it unlikely that she will act in this way. In the circumstances of this case, it is more probable that the parties will be motivated to be reasonable in navigating co-parenting issues if they know that a third-party is available to provide immediate adjudication if a resolution cannot be agreed upon: J.R.V. at para. 36.
- [234] The respondent has not objected to appointing a parenting coordinator on the basis of cost, but in my view the cost, while not insignificant, is outweighed by the benefits of making an appointment, and given the parties' financial circumstances the cost is not prohibitive.
- [235] Pursuant to s. 15 of the FLA, I therefore order that within 21 days of this judgment the parties retain a parenting coordinator for a minimum term of 24 months. If the parties are unable to otherwise agree on which parenting coordinator is to be retained, the selection will be made by the claimant providing the respondent with the names of three parenting coordinators who are willing and available to work with the parties, and the respondent will promptly choose one name from that list.
- [236] The parenting coordinator may assist the parties in the following manner:
- (a) by building consensus between the parties, including through:
 - i. developing and instituting guidelines for the implementation of the parenting terms of my order;
 - ii. developing and instituting guidelines for communications between the parties;
 - iii. identifying, creating and implementing strategies for resolving conflicts between the parties; and
 - iv. providing information respecting resources available to the parties for the improvement of their communication or parenting skills;
 - (b) subject to the specific provisions of this order and pursuant to s. 18 of the FLA and s. 6 of the Family Law Act Regulations, B.C. Reg. 347/2012, and in the event the parties cannot agree on any matter respecting their parenting responsibilities as defined in s. 41 of the FLA, by making a determination on such matters subject to s. 19 of the FLA.

- [237] The topics covered by clause (b) immediately above will include: (i) the manner and place of drop-offs and pickups for the exchange of N.A.; (ii) scheduling parenting time during holidays, summer vacation, birthdays and other special days; (iii) rescheduling or reallocating parenting time to reasonably accommodate the needs of N.A. or the parties; and (iv) resolving disputes concerning N.A.'s activities and health care. I mention these specific topics because most of them are among the issues upon which the parties have at times had difficulty agreeing. To be clear, I am not limiting the parenting coordinator's authority to make determinations to these topics.
- [238] The parties will each contribute \$10,000 from their share in the net sale proceeds of the former family home to meet the cost of retaining the parenting coordinator, to be held in trust for that purpose by one or both of their counsel, the parenting coordinator, or another mutually agreed upon person.
- [239] The fees, disbursements and other charges of the parenting coordinator will be shared equally by the parties, or as allocated by the parenting coordinator who is granted the authority to order a different fee or cost allocation on consideration of the circumstances including the parties' respective incomes, the source, nature and frequency of the issues that the parenting coordinator is asked to determine, and the parenting coordinator's assessment of the reasonableness of the positions taken by each party.
- [240] Fifth, because N.A.'s counselling may provide further insight into her best interests in terms of parenting time arrangements, the claimant has suggested that, after consultation with N.A.'s counsellor, the parties can revisit those arrangements after six months. I agree, except in my view a longer period of time is preferable before permitting a review, to give the parties and N.A. more time to work with their counsellors and, one hopes, reap the attendant benefits.
- [241] I therefore order that:
- (a) until further order of the court or written agreement between the parties:
 - i. N.A. will reside primarily with the claimant, who will have parenting time with N.A. unless the respondent is exercising parenting time; and
 - ii. the respondent shall have parenting time with N.A. on Tuesdays from 5:00 p.m. to Wednesdays at 2:30 p.m., and Fridays at 2:30 p.m. until Saturdays at 7:00 p.m.;
 - (b) either party may apply to the court for a review of parenting time at any time after one year from the date of these reasons without having to meet the thresholds in s. 47 of the FLA or s. 17(5) of the Divorce Act.

- [242] The one modest change I have made to the current parenting time schedule is to permit the respondent to start his parenting time at 2:30 p.m. on Fridays, as he has requested, because beginning this September N.A. will be in kindergarten and, I assume, finish school around that time. If it turns out that her school day ends at a different time, my order should be adjusted accordingly.
- [243] If either party seeks a parenting time review, I strongly suggest but do not order that the parties consider obtaining a s. 211 report or a report or letter from a child support professional, in particular N.A.'s counsellor, and provide the recommendations or comments of the professional to the court.
- [244] While I am not seizing myself of a further parenting time review, if that review takes place within three years of this judgment and the parties so request I will attempt to make myself available to hear it subject to scheduling availability.
- [245] Sixth, I am vacating the term in the consent order, made April 26, 2024, that the parties will communicate with each other by email and only with respect to parenting arrangements regarding N.A., and replacing it with the following similar but more comprehensive term:
- (a) the parties will communicate with each other by email and only with respect to parenting arrangements regarding N.A., except as provided for in clauses (b) to (e) immediately below;
 - (b) the parties may communicate by phone or text in the case of emergencies;
 - (c) the parties may communicate orally during the counselling sessions or parenting coordinator meetings provided for by my order;
 - (d) the parties may communicate through counsel; and
 - (e) provided they agree in writing, the parties may communicate in other ways and for other purposes, unless and until that agreement is withdrawn by one of them in writing.
- [246] Seventh, on September 24, 2021, the parties agreed that neither of them would remove N.A. from British Columbia without the other's consent, and on June 21, 2023 the respondent obtained an order that N.A.'s passport be held in trust by the claimant's counsel until further court order or written agreement between the parties. The respondent now asks that I make an order prohibiting either party from removing N.A. from Canada until she is an adult, with the caveat that this restriction may be reviewed after two years.
- [247] For the following reasons, I am not prepared to make the order requested by the respondent.
- [248] To begin with, although the claimant has no family in Canada, her mother and sister visit for lengthy periods of time. More importantly, based on the claimant's evidence and the evidence of her witnesses, I accept that she has established a community of friends in British Columbia, which suggests both an intention to stay in this country and the creation of a support network that will facilitate her doing so.

- [249] Furthermore, the claimant obtained her Canadian citizenship in June 2023 and is well on her way to becoming accredited as a pharmacist in this country. These steps indicate an intention and ability to stay here. While the claimant's parents own a pharmacy in Egypt, and at one point sought to buy a pharmacy in that country for her to work at and run, there is no evidence to suggest they ever renewed these efforts, whether before or after the parties' separation.
- [250] I also accept the claimant's evidence that when she was in Egypt from October 2020 to late February 2021 she did not form or express an intention to permanently stay in Egypt if reconciliation with the respondent was not possible. I further accept her evidence that the travel schedules the parties followed at the front and back ends of this trip were suggested by Church clerics, as opposed to reflecting a potential desire on her part to permanently relocate with N.A. to Egypt.
- [251] Granted, at one point the claimant's mother testified that speakerphone discussions with a cleric in Egypt referenced conditions for the claimant and N.A. to return to Canada. But her mother was not part of the speakerphone discussions. Much more importantly, and regardless, I accept her mother's testimony in re-examination that the speakerphone discussions did not focus on whether the claimant would return to Canada but rather on achieving a marital reconciliation.
- [252] As for the testimony of F.G. that he and his wife tried to convince the claimant to return from Egypt in early 2021, F.G. also testified that the claimant had no plan to stay in Egypt for a long time and was just taking a break.
- [253] Even had I concluded, which I have not, that the claimant expressed an intention to stay in Egypt with N.A. if reconciliation was not possible, I would have given that expression of intention minimal weight in deciding this issue, because in the ensuing four years the claimant and N.A. have established deep roots in Canada that make it highly unlikely that she would abscond to Egypt with N.A.
- [254] While the claimant and N.A. have now made their life in Canada, her parents and sister live in Egypt and have close relationships with N.A. It is thus understandable that the claimant and N.A. would want to travel to Egypt to see them. International travel to see her family would be in N.A.'s best interests.
- [255] Allowing N.A. to travel to Egypt with the claimant would also provide the respondent with an opportunity to have N.A. spend time with his family members in that country, in particular if he can arrange to travel there during overlapping periods so as to permit him the opportunity to exercise parenting time there.
- [256] In sum, I have no concern that the claimant will abscond to Egypt with N.A. if permitted to travel there. That Egypt is not a contracting state to the Hague Convention does not cause me to conclude that restrictions need be imposed to prevent this from happening.

- [257] I am therefore ordering that, until further order of the court or written agreement by the parties, the claimant will hold N.A.'s passport, has leave to renew that passport as needed, and will be permitted to travel with N.A. to Egypt each year for up to 21 days in July or August, provided she gives the respondent: (i) at least 60 days' notice of her intention to travel; and (ii) her itinerary and contact information in Egypt at least seven days prior to leaving Canada.
- [258] If the claimant's travel plans to Egypt with N.A. conflict with the respondent's access schedule, he will be provided with make-up access time if he so desires.
- [259] For the reasons set out above, I also reject the respondent's alternative submission that neither party should be permitted to travel to Egypt with N.A. unless they obtain the other party's consent and provide security of \$30,000, to be forfeited if N.A. is not returned to Canada by the agreed upon time.

Child Support

- [260] The claimant seeks retroactive and prospective child support. The respondent does not oppose this request. The parties also agree on the respondent's income for the purpose of making the necessary calculations.
- [261] The only point on which they disagree is the extent to which income should be imputed to the claimant for the purposes of calculating section 7 child support.
- [262] I will begin my discussion of child support by setting out the relevant legal principles regarding imputation of income, after which I will determine what income should be imputed to the claimant. I will then address what amounts are to be paid by the respondent both retroactively and prospectively with respect to child support.

Legal Principles Regarding Imputing Income

- [263] Under s. 16 of the Guidelines, a spouse's annual income is calculated using sources of income set out under the heading "total income" in the T1 General form issued by Canada Revenue Agency ("CRA"), subject to adjustments available under Schedule III. The court must then address whether any of the circumstances described in ss. 17 to 20 of the Guidelines exist so as to require an adjustment to arrive at the fairest determination of income available for support, keeping in mind the objectives of s. 1 of the Guidelines. See *Adair v. Baryla*, 2025 BCSC 565 at para. 144.
- [264] Section 19 of the Guidelines permits a court to impute such amount of income to a spouse as it considers appropriate in the circumstances, which include that the spouse is intentionally underemployed or unemployed: s. 19(1)(a), Guidelines.

- [265] The test for imputing income for intentional underemployment or unemployment is one of reasonableness, having regard to the party's capacity to earn income in light of age, education, health, work history and work availability. A party's capacity to earn income will include that person's ability to work or to be trained for work. See *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37.
- [266] It is not necessary to show an intent to evade child support; what matters is whether the parent is earning what the parent is capable of earning: *Barker v. Barker*, 2005 BCCA 177 at para. 19.
- [267] Underemployment or unemployment will not result in the imputation of income where, "required by the needs of the child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse": s. 19(1)(a), Guidelines.
- [268] The underemployed or unemployed party bears the onus of establishing that one of these specified needs requires them to be underemployed or unemployed. The desire to simply stay at home to care for children or pursue an education is insufficient to invoke the justification in s. 19(1)(a). Rather, one or more of the specified needs must render the party unavailable for employment they are otherwise able to pursue. See *Koch v. Koch*, 2012 BCCA 378 at para. 37; *McCaffrey v. Paleolog*, 2011 BCCA 378 at paras. 47-49, 58.

Imputing Income to the Claimant

- [269] The claimant submits that no income should be imputed to her for 2021 or 2022 because she was providing childcare after N.A.'s birth in January 2020. In oral submissions, she suggested that income of about 70% of minimum wage be imputed to her for 2023 and 2024, reflecting the amount she could have worked given that N.A. was in daycare. The claimant suggests that this figure could also apply for 2025, or alternatively the imputed income could be 100% of minimum wage, given that N.A. is starting full-time kindergarten in September 2025.
- [270] The respondent accepts that the claimant was unable to work due to childcare responsibilities up to the end of 2021, but submits that by 2022 she could reasonably have worked at a full-time minimum wage job. He further submits that it would have been reasonable for her to complete her PEBC accreditation sometime in 2024 and to have started working as a pharmacist. He thus argues that her imputed income should be set at the full-time minimum wage amount for 2022 and 2023, at \$50,000 in 2024 to reflect work as a pharmacist for part of that year, and then at \$77,000 as a full-time pharmacist in 2025.
- [271] In assessing the merits of each party's argument, it is necessary to review some of the evidence bearing on this issue.

- [272] The claimant testified that she did not work in 2020 or 2021 because she was looking after N.A., including after the August 23, 2021 separation. She started preparing for her first PEBC exam in June 2022, which is when N.A. began daycare, but failed the exam in January 2023. The only other 2023 sitting for that exam was on June 21, but the claimant had a court hearing that day and was unable to take the exam. She rescheduled the exam for the next available date, in January 2024, and passed it on that occasion.
- [273] The claimant took and passed the second PEBC exam in November 2024, and was scheduled to take the third and final exam in May 2025. She testified that her hope was to take the exam at this time, although she was unsure whether she would be able to do so given that in February, March and early April she was preparing for and attending the two-week trial in this matter.
- [274] Following completion of the third PEBC exam, the claimant's only remaining step in completing accreditation is the university bridging program, which involves three months of coursework and three months of practice. She had been scheduled to start this bridging program in January 2025, but moved it to May 2025 because of this trial.
- [275] The claimant testified that she did not know precisely what a first-year pharmacist earns, but that an online search suggested that a full-time starting position may pay about \$77,000 per year. The respondent accepts that a full-time pharmacist will start at this salary.
- [276] The claimant testified that N.A. was at day care during the periods in which she was studying for her PEBC exams, two days per week starting in June 2022, and then three half days per week at a new daycare starting in April 2024. The first daycare offered a full-time program, but it cost \$2,000 per month, as opposed to \$1,000 per month for part time attendance. The second daycare did not offer a full-time program. The parties agreed to switch to this daycare to give N.A. priority to attend the same school for kindergarten. During this period, the respondent was paying the claimant between roughly \$2,000 and \$2,800 per month in child support and approximately \$6,000 per month in spousal support.
- [277] It so happened that one of the respondent's witnesses was a pharmacist who, like the claimant, was educated in that profession in Egypt. He testified that the process of getting accredited in British Columbia took him about one year, during which his spouse looked after their children. He appears to have done the bridging program during this time frame. However, there is no suggestion that this witness failed to pass or needed to reschedule any of the three main PEBC exams.
- [278] Having considered all of the evidence, in my view it was reasonable for the claimant not to have commenced preparing for her accreditation exams prior to the August 2021 separation, and also for several months afterwards. Until separation, she was a full-time caregiver whose husband was earning a substantial income. After separation, it would have taken time to make the transition to a new household and begin preparing for her exams in earnest, plus N.A. was still very young.

- [279] Once N.A. was two years old, at the end of January 2022, it could no longer be said that the childcare needs required the claimant to remain fully unemployed. But the claimant's reasonable educational needs justified her remaining unemployed or underemployed while she worked towards obtaining her accreditation as a pharmacist in British Columbia.
- [280] The question becomes, for what length of time did the claimant's reasonable educational needs justify her remaining unemployed or underemployed for the purpose of completing the PEBC exams and bridging program?
- [281] Relevant in this respect is the claimant's concession that income should be imputed to her starting in 2023, on the basis that by that point she would have been able to work about 70% of full time at a minimum wage job. It logically follows that she should have been able to spend roughly the same amount of time studying for her exams and taking the bridging program. Even accounting for the claimant failing one exam, and having to miss another because of a court date, in my view it is reasonable to expect her to have finished the accreditation process in about two years.
- [282] In coming to this conclusion, I have been influenced by the claimant's vague answers when cross-examined on the amount of time she had spent studying for her PEBC exams. For example, after expressing repeated reluctance to provide an estimate of the hours spent studying for her November 2024 exam, she was asked whether it was closer to two hours or 200 hours. She still resisted providing even a rough estimate, stating that she had no idea other than that it took a lot of preparation time.
- [283] During this line of cross-examination, the claimant was also unable to provide any detail about what a typical day would look like in terms of her study hours. I appreciate that, as she stated, a typical study day would depend on N.A.'s schedule. But I nonetheless would have expected her to be able to provide at least some detail in response to this question, such as by describing her study habits on a day when N.A. was in daycare or at parenting time with the respondent.
- [284] The claimant's answers to these questions in cross-examination suggest that she at some level recognizes that she has not spent as much time as she could have done in preparing for her exams, and that it would have been reasonably possible for her to finish the accreditation process more quickly than she did.
- [285] Taking all of these factors into account, I find that the claimant should reasonably have been able to finish the accreditation process and obtained employment as a pharmacist by the end of June 2024. I note that the claimant has provided no evidence to suggest, nor did she submit in closing submissions, that once accredited it would or might be difficult to find a position as a pharmacist.
- [286] It would have been reasonable for the claimant to have obtained part-time employment at this point, because N.A. was attending daycare three half-days per week, and could not attend more often at that particular institution.

- [287] Accordingly, I am imputing to the claimant income of: (a) \$27,000 for 2024, representing part-time work (70% of full-time) as a pharmacist from July until December; and (b) \$61,538 for 2025, which assumes part-time work from January until N.A. starts full-time school in September, and then full-time work thereafter.
- [288] I reject the respondent's argument that the claimant could have used her child support and spousal support payments to put N.A. into daycare full-time or to hire a part-time nanny or babysitter, to allow her to study and then work full-time prior to N.A. starting kindergarten in September 2025. The claimant was not challenged on her testimony that to do so would have been prohibitively expensive, given that the respondent refused to pay his share of section 7 expenses, including for full-time attendance at the first daycare as proposed by the claimant.
- [289] Finally, I reject the respondent's argument that the claimant could have relied on one of her witnesses to babysit N.A. while she studied. This witness testified in cross-examination that if the claimant needed help in completing her studies the witness would be willing to provide some child care for N.A. But this cross-examination lacked the specificity necessary to allow me to conclude that the witness would have been prepared to provide free childcare for N.A. for numerous hours per week over a lengthy period, on top of caring for her own children.

Calculating Table and Section 7 Amounts for Child Support

- [290] The parties agree that for the purpose of calculating the table amounts of retroactive child support under s. 3(1) of the Guidelines, the respondent's income from 2021 until 2024 will be his line 150 income on his CRA notices of assessment for those years. These amounts are \$289,893 for 2021, \$329,787 for 2022, \$410,913 for 2023, and \$396,291 for 2024.
- [291] The parties propose using the respondent's 2024 income to calculate the table amount of retroactive child support that he owes for 2025 up to and including the completion of the trial in April 2025.
- [292] Using these numbers, DivorceMate indicates that the respondent's monthly table child support payments are \$2,447 from September to December in 2021, \$2,758 for 2022, \$3,391 for 2023, \$3,277 for 2024 and \$3,277 from January to April 2025.
- [293] My understanding is that the parties also agree on the amounts of table child support the respondent paid to the claimant from the date of separation until the end of the trial. However, the figures provided by each of them to me in closing submissions do not match.
- [294] Accordingly, I will leave the parties to calculate the net table amount owed by the respondent for retroactive child support from the date of separation on August 23, 2021 until the end of the trial in April 2025, to be paid by the respondent to the claimant from his share of the net proceeds of sale of the former family home.

- [295] Prospective table child support in 2025, based on the respondent's 2024 income of \$396,291, is \$3,277 per month. Any arrears owed as at the date of my order will be paid to the claimant from the respondent's share of the net proceeds of the former family home.
- [296] My understanding is that the parties also agree on the section 7 expenses incurred by the claimant from the date of separation until the end of the trial. However, that number has been provided to me as a total (\$30,595.57), and not on a year-by-year basis. I will therefore leave the parties to calculate the amount owed by the respondent to the claimant for retroactive section 7 expenses based on my determination that the claimant's employment income in 2021, 2022 and 2023 is zero, and for 2024 and 2025 is imputed at \$27,000 and \$61,538, respectively.
- [297] Using these numbers, together with my conclusion, explained later in these reasons, that the claimant should receive mid-range spousal support, DivorceMate indicates that the respondent's proportionate responsibility for section 7 expenses incurred in each year post-separation is 69.7% for 2021, 69.1% for 2022, 69.2% for 2023, 67.7% in 2024 and 65.7% for 2025.
- [298] The parties' responsibility for post-trial section 7 expenses in 2025 will be based on the respondent's 2024 employment income of \$396,291 and the claimant's imputed employment income of \$61,538 for 2025. As just explained, the respondent's proportionate responsibility for section 7 expenses post-trial in 2025 is thus 65.7%.
- [299] As long as N.A. 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 June 1 each year; and
 - (b) copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency immediately upon receipt.
- [300] The parties shall conduct a review of table and section 7 child support on an annual basis and payments shall be adjusted as necessary by July 1 of every year, except that the claimant's income will not be less than \$77,000 for the purposes of making any adjustments.

Division of Family Property and Debt

- [301] The parties mostly agree regarding the division of family property and debt. Their main dispute concerns the division of the net proceeds of sale of the former family home, which is by far their most valuable asset. The parties also disagree about whether any portion of the value of an apartment and vehicle in Egypt constitutes family property, and if so how that family property should be divided.

[302] In this part of my reasons, I will start by reviewing some general principles relating to the division of family property and debt. I will then address the division of the family property and debt regarding which the parties are not in material disagreement. Finally, I will determine the disputed issues relating to the property in Egypt and the net proceeds of sale of the former family home.

Legal Principles Regarding Division of Property and Debt

[303] Under s. 81 of the FLA, on separation each spouse is presumptively entitled to an undivided half interest in all family property and is equally responsible for family debt, regardless of their respective use or contribution. Rights to family property and responsibilities for family debt thus crystallize on separation: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 38; *Weaver Estate v. Weaver*, 2022 BCCA 79 at paras. 36, 41, 57.

[304] Section 84(1)(a) defines family property as all real and personal property, legally or beneficially owned by at least one spouse at separation, as well as property acquired after separation if derived from family property: *Dignard v. Dignard*, 2025 BCCA 43 at para. 29 [*Dignard* (BCCA)].

[305] However, s. 85 excludes certain categories of property from family property, including property acquired by a spouse before the relationship began, inheritances and gifts from a third party.

[306] A party seeking to rely on s. 85 must prove that the property is excluded, and must also prove the property's value at the outset of the relationship, if it is later used to acquire an asset that is family property at separation. If documentary evidence is unavailable, the party will need to testify as to their recollection. The trial judge is permitted to draw reasonable inferences from evidence that is less than certain or precise to do justice between the parties. See s. 85(2), FLA; *P.R.C. v. C.K.C.*, 2024 BCCA 363 at paras. 46, 96.

[307] The increase in value of excluded property, after the later of the date when the relationship began or the property was acquired, is family property and thus presumptively shared equally (s. 84(2)(g)). The increase in value must be proven by the spouse making the claim. See *Mills v. O'Connor*, 2025 BCCA 34 at para. 51; *Loberg v. Loberg*, 2023 BCSC 2283 at para. 15.

[308] Pursuant to s. 86, family debt includes all financial obligations incurred by a spouse from the beginning of the relationship until separation, but also after separation where incurred to maintain family property. The party alleging the existence of the debt has the onus of establishing it, and if arising after separation of proving it was incurred to maintain family property. See *Chatha v. Uppal*, 2018 BCSC 6 at para. 309.

[309] Section 87 provides that the presumptive date for valuing family property or debt is the date of the trial, and that the value of family property must be based on its fair market value.

Division of Family Property and Debt Not in Material Dispute

- [310] Unless stated otherwise, and subject to any errors in calculation by me, the amounts referenced below will be paid from the paying party's share of the net sale proceeds in the former family home.
- [311] I have already discussed the joint line of credit that the respondent unilaterally reduced by \$98,920.38 following the parties' separation. Pursuant to the consent order made on April 26, 2024, the respondent is solely responsible for this amount, which means that one half, or \$49,460.19, is to be paid to the claimant.
- [312] The parties agree that the value of the vehicle the respondent traded in after separation is offset by necessary post-separation repairs to that vehicle paid for by him. Accordingly, there is no family property or debt to be divided with respect to this vehicle.
- [313] The claimant received a refund from CRA for the 2021 tax year. Prorating this amount based on the eight months the parties were married in 2021, \$3,349.33 of the refund constitutes family property. The respondent is entitled to half this amount, or \$1,674.66, to be paid to him by the claimant.
- [314] The Corporation received a \$4,926 refund from CRA referable to July and August 2021 tax year. The claimant is entitled to half this amount, or \$2,463, to be paid to her by the respondent.
- [315] The parties agree that their bank accounts as well as the bank account for the Corporation should be valued as at the date of separation. The respondent's Scott Schedule details the amount in each account at that time, as well as any portion constituting excluded property as at the date of the marriage. I do not understand the claimant to dispute any of these amounts or the respondent's claims of excluded property.
- [316] Accordingly, after adjusting for excluded property I find that the following balances of family property were in the respondent's bank accounts as at the date of separation, one half of which will be paid to her by the respondent:
- (a) RBC advantage banking account, \$5,378.76;
 - (b) RBC high interest savings account, \$10;
 - (c) RBC US high interest savings account converted to Canadian dollars, \$300;
 - (d) RBC TFSA, \$968.70;
 - (e) National Bank of Egypt account, converted to Canadian dollars, \$17,253.85.
- [317] The parties agree that the respondent's RRSP with a balance of \$20,376.29 is family property, one-half of which will be transferred to the claimant through a spousal rollover.

- [318] At the time of separation, the claimant had two checking accounts with a combined balance of \$3,231.47. This amount constitutes family property, one half of which, or \$1,615.74, is to be paid by the claimant to the respondent.
- [319] The Corporation had \$45,706.92 in its bank account as at the date of separation. The respondent's Scott Schedule appears to misstate the amount by taking the balance on August 31, 2021 instead of on the date of separation. One half of the amount I have indicated, or \$22,853.46, will therefore be paid to the claimant by the respondent.
- [320] The balance in the parties' joint account as at separation was \$11,288.14. However, the respondent has provided evidence establishing that this account existed prior to the marriage, in his name only, at which time it contained \$7,959.53. He thus claims this latter amount as excluded property, which I do not understand to be contested by the claimant. In addition, shortly after separation the claimant removed \$5,550.30 from the joint account, after which the respondent removed the remaining \$5,737.85. The net result is that the respondent should receive \$7,771.99 from the net sale proceeds of the former family home.
- [321] Leaving aside the former family home, the only family debt at the time of separation relates to the respondent's underpayment of taxes for 2021. The portion of this liability referable to the period during which the parties were married is \$6,854.36. One half this amount, or \$3,427.18, should therefore be paid by the claimant to the respondent.
- [322] As I will describe in more detail below, the loan made to the respondent by the Corporation to help purchase the former family home is both family property and debt. I therefore make no order with respect to this loan, which will remain an asset of the Corporation and a liability for which the respondent is solely responsible.
- [323] There is no evidence to suggest that the Corporation holds any assets or has any liabilities that could impact the division of family property or debt other than the items I have mentioned above. The claimant therefore has no further family law interest in the Corporation. I thus order that she cooperate in a timely way in providing whatever assistance is needed to remove her as a shareholder of the Corporation in a manner consistent with the division of family property and debts set out in this order.
- [324] Following separation, the respondent incorporated a new company, which appears to have been used on occasion with respect to his medical practice. There is no family property or debt referable to this new company, and so it will not be the subject of an order in this proceeding.
- [325] The respondent paid post-separation property taxes for the former family home totaling \$9,955.63. The claimant does not oppose his request that she pay to him half this amount, or \$4,977.82.

- [326] Similarly, the claimant does not contest the respondent's request that she pay to him \$3,294.37, which is one half of the \$6,588.74 that he paid for post-separation house repairs.

Apartment and Vehicle in Egypt

- [327] The respondent grew up in an apartment owned by his parents, which I will call the childhood apartment. He testified that in 2012, his father bought a nearby apartment ("Egypt Apartment") in the respondent's name as "some sort of inheritance", but that his parents ended up living there because around that same time he moved to Canada.
- [328] The respondent also referred to the Egypt Apartment as being purchased in his name as a "future inheritance". At another point, he testified that his father told him that, "we are giving you the apartment under your name", and that the childhood apartment would be given to his sisters.
- [329] The respondent testified that in late 2012 the childhood apartment suffered some cracks from an earthquake. He therefore encouraged his parents to move into the Egypt Apartment, given that it was standing empty, they had bought it, and he was not planning to return to Egypt apart from visits. His parents therefore moved into the Egypt Apartment, and were still living there at the time of trial.
- [330] The respondent testified that on January 10, 2022 he "returned ownership" in the Egypt Apartment to his father. He explained that, although the associated contract of sale states that his father paid money to him for the Egypt Apartment, there was no actual payment. Rather, this information was included only for legal reasons, and he was "returning ownership back to my parents". The respondent later suggested that the amount referenced in the contract reflected an appraised value for the property.
- [331] In cross-examination, the respondent agreed that he had listed the Egypt Apartment in his financial statement made on January 7, 2022 as an asset then worth \$65,232 that he had acquired in December 2011. In this same financial statement, he claimed the Egypt Apartment's value on acquisition, said to be \$48,924, as excluded property.
- [332] The respondent's financial statement made January 9, 2023 does not mention the Egypt property, nor does his financial statement made March 2, 2025. However, the respondent's financial statement made April 15, 2024 lists the Egypt Apartment as property disposed of in January 2022 for zero dollars.
- [333] In cross-examination, the respondent volunteered that this entry in his April 15, 2024 financial statement reflected that he had "just returned ownership" in the Egypt Apartment to his parents, receiving nothing in return, because they had bought and used the property, and had "put it as future inheritance for me". The respondent went on to state, again without being asked, that he had no problem giving the claimant her share of his Egyptian assets, including this property.

- [334] After the next court break, the respondent's counsel informed me that the respondent did not consider himself bound by his pre-break offer to share a portion of his Egyptian assets with the claimant. His counsel explained that this offer was made "under the pressure of cross-examination", and without any knowledge as to how the law of property division might apply to the Egypt Apartment.
- [335] In closing submissions, the respondent argued that the Egypt Apartment was gratuitously transferred to him by his father, and was thus subject to the legal presumption of a resulting trust that applies to such familial transfers. Under this presumption, the property is viewed as being held in trust by the transferee for the transferor unless it can be shown that the transferor intended a gift: *Beaverstock v. Beaverstock*, 2011 BCCA 413 at para. 9.
- [336] The respondent argues that the evidence in this case indicates that his parents occupied the Egypt Apartment for the entirety of the parties' relationship, which is consistent with them not intending its transfer to be a gift to him, and that the claimant could have called his parents as witnesses to provide evidence rebutting the presumption of a resulting trust but did not do so.
- [337] In my view, however, the presumption of a resulting trust has been rebutted on the evidence. In particular, the respondent testified about his father's intention in transferring the Egypt Apartment, which given their relationship I infer was communicated directly to the respondent and is thus admissible as evidence of his father's intention. Based on this evidence, I find that when the transfer was made his father intended to gift ownership of the Egypt apartment to the respondent as an advance on his inheritance.
- [338] The fact that the respondent ended up moving to Canada in November 2012, and that his parents used the Egypt Apartment as their home for much of the time afterwards, does not alter the fact that the respondent's father intended to gift him the property at the time it was purchased in the respondent's name.
- [339] Tellingly, when I asked respondent's counsel to address the respondent's evidence about his father's intention, which counsel had not mentioned in either his written or oral submissions, counsel said that this evidence "confounded" the analysis. When I asked counsel to clarify this answer, counsel stated that he could not say that his client's evidence regarding intention was consistent with a resulting trust. In other words, counsel essentially conceded that this evidence rebutted the presumption of a resulting trust vis-à-vis the Egypt Apartment.
- [340] In written submissions only, the respondent argued in the alternative that, if the Egypt Apartment was a gift from his father to him, so as to make any appreciation in value from the date of the marriage to its disposal in January 2022 family property, I should nonetheless divide that family property unequally, "on the basis of fairness". The only justification provided in support of this submission was that the claimant's parents own several apartments in Egypt, a portion of which she may expect to inherit one day.

- [341] In making this alternative submission, I take the respondent to be relying on s. 95(1) of the FLA, under which the court may order an unequal division of family property or debt on the basis of significant unfairness.
- [342] The relevant factors the court may consider in deciding whether to order an unequal division based on significant unfairness are set out in s. 95(2) and (3):
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
 - (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

- [343] Section 95 seeks to increase certainty, predictability and fairness in property division by reducing, but not eliminating, the discretion of the courts to depart from the usual rule of equal division. This purpose is accomplished in two ways. First, by requiring significant unfairness, not just unfairness, as a threshold for departing from equal division. Second, by more precisely identifying the factors to be considered in applying this threshold. See Jaszczewska at paras. 36-37, 41.
- [344] The high threshold of "significant unfairness" in s. 95(1) connotes something compelling or meaningful having regard to the factors in s. 95(2). The general rule of equal division thus prevails unless persuasive reasons can be shown for a different result. A different result requires, "something objectively unjust, unreasonable or unfair in some important or substantial sense". See Jaszczewska at paras. 41-42; Dignard at para. 33; Mills at para. 54.
- [345] In considering a claim for unequal division of family property, the court should proceed by making a notional equal division and then determine whether such equal division would be significantly unfair given the factors in s. 95: Healey v. Healey, 2024 BCCA 68 at para. 69.
- [346] In my view, the possibility that the claimant might inherit an apartment or other property from her parents in the future does not establish significant unfairness within the meaning of s. 95(1) of the FLA so as to justify an unequal division of the family property component of the Egypt apartment; i.e., the post-marriage increase in its value.
- [347] For one thing, while the respondent has provided no reliable and uncontested evidence as to the amount by which the value of the Egypt Apartment has appreciated, his affidavit made January 7, 2022, which is the month the property was transferred back to his father, indicates that it had appreciated in value from the date of the marriage by only \$16,308.
- [348] I recognize that, as the claimant argues, the respondent's affidavit may understate the amount of appreciation. But the onus is on him to meet the test in s. 95(1), and it does not lie in his mouth to suggest significant unfairness while at the same time providing a sworn affidavit in which he estimates the family property in this asset as only \$16,308, an amount representing a tiny part of the parties' total family property.
- [349] The respondent's claim of significant unfairness is further undermined by his testimony in cross-examination, in which he in effect volunteered that he was willing to share any appreciation in the value of the Egypt Apartment with the claimant. While the respondent may have given this evidence without a thorough understanding of his entitlements at law, I find it unlikely that he would have made this offer, unasked, were it to result in significant unfairness to him. Indeed, I would have rejected his s. 95(1) argument on this basis alone.

- [350] I also seriously question whether the prospect of the claimant inheriting property from her parents in the future falls within the scope of any of the factors in s. 95(2). The only factor that appears potentially relevant is s. 95(2)(i), which provides that in considering whether there has been significant unfairness the court may consider, "any other factor, other than the consideration referred to in subsection (3) [which is irrelevant in the context of this case], that may lead to significant unfairness".
- [351] However, the phrase "any other factor" in s. 95(2)(i) only encompasses factors related to the economic characteristics of the spousal relationship, which can include the legitimate economic expectations of the parties: *Voitchovsky v. Gibson*, 2022 BCCA 428 at para. 61. Financial advantage alone, unrelated to the economic characteristics of the spousal relationship, does not justify a departure from the usual rule that family property is to be divided equally: *Cook v. Cook*, 2021 BCCA 194 at para. 50.
- [352] Here, I find that the parties had no legitimate expectation that family property representing the appreciation in value of a pre-marriage gift, like the Egypt Apartment, made to one party by their parents, would be divided equally upon separation only if the other party had by that point also received a gift or inheritance from their parents.
- [353] Having made this finding, I cannot see how any financial advantage to the claimant that might be seen to arise because she did not receive a gift from her parents during the marriage, and thus need not share its appreciation in value with the respondent, is related to the economic characteristics of their relationship. Any such financial advantage therefore does not fall within the scope of s. 95(2)(i) so as to constitute a factor capable of supporting a finding of significant unfairness.
- [354] But in any event, I have no evidence as to how much the claimant might have been expected to inherit from her parents in the future. For example, while there is evidence that the claimant's parents own four apartments, I have no idea as to the apartments' total value, the extent to which those properties may be encumbered, the overall financial situation of the claimant's parents, or their intentions with respect to estate planning or future gifts to the claimant.
- [355] In sum, I reject the respondent's proffered justification for why the post-marriage appreciation in the value of the Egypt Apartment should be divided unequally under s. 95.
- [356] The parties agree that, if I come to this conclusion, it will be necessary to appraise the value of the Egypt Apartment as at the date of the marriage and either the date of its disposition in January 2022 or the date of trial. In my view, the date of disposition should be used because the respondent thereafter had no legal or beneficial ownership interest in the Egypt Apartment, meaning that any subsequent increase in market value does not fall within the definition of family property.

- [357] Parenthetically, it could perhaps be argued that, because the claimant bears the onus of establishing the appreciation in value of the Egypt Apartment, she is "stuck" with the value of \$16,308 given in the respondent's affidavit. However, this argument was not advanced by the respondent. To contrary, the parties agree that an appraisal is needed to determine the property's appreciation in value.
- [358] Subject to any agreement by the parties regarding valuation, I am therefore ordering that an appraisal be carried out to determine the fair market value of the Egypt Apartment as at the date of the marriage and the date of its disposition by the respondent, and that the respondent pay to the claimant an amount equal to one half of any increase in value within 30 days of the appraisal being completed.
- [359] The trial evidence also referenced a Hyundai Accent that the respondent testified was a second-hand vehicle his father bought for him as a graduation present in 2010, although his April 15, 2024 financial statement describes this vehicle as a "2010 Hyundai Accent".
- [360] That same financial statement indicates that the Hyundai Accent was disposed of for zero dollars in October 2022. The respondent testified that after he moved to Canada in 2012 his parents had used the vehicle almost exclusively, so he transferred it to them in 2022.
- [361] Given that the Hyundai Accent was a graduation present to the respondent, I find that his father intended it to be a gift and the presumption of resulting trust has been rebutted.
- [362] However, the Hyundai Accent was excluded property as at the date of the parties' marriage. I find it unlikely that this vehicle could have subsequently appreciated in value, and the claimant has not met her onus of establishing otherwise. I therefore conclude that no portion of the value of the Hyundai Accent is family property.

Former Family Home

- [363] I next turn to the respondent's argument that the parties' family property should be divided unequally in recognition of his contribution of about \$282,000 in formerly excluded property to the purchase of the former family home.
- [364] I will begin my discussion of this issue by setting out some of the relevant evidence. I will then explain why, in contributing this excluded property to help buy the former family home, the respondent transformed it into family property. Finally, I will determine whether the parties' family property should be divided unequally, by "backing out" his contribution of \$282,000, to prevent significant fairness.
- [365] I have already described how the Lower Mainland medical clinics at which the respondent works provided his compensation to the Corporation up until the early fall of 2021. The respondent received his income through the same Corporation when he worked for the health authority in Manitoba. He was at that time its sole shareholder.

- [366] On the day the parties were married in September 2018, the balance in the Corporation's bank account was \$281,788.87. This seems to have been the only asset of the Corporation, which also appears to have had no liabilities. At trial, the parties therefore proceeded on the basis that the respondent's shares in the Corporation were at that point excluded property worth \$281,788.87.
- [367] As previously noted, in November 2019 the respondent transferred to the claimant one-half ownership in the Corporation, in the form of nonvoting shares.
- [368] The parties bought the former family home as joint tenants in August 2020. The \$1,455,000 purchase price was funded by a mortgage and \$330,000 withdrawn from the Corporation's bank account.
- [369] On the advice of the respondent's accountant, the Corporation loaned him the \$330,000 to avoid the tax consequences of distributing the money as dividends. There was no written loan agreement, but his accountant created a schedule pursuant to which the respondent repaid \$1,000 to the Corporation each month.
- [370] The parties agree that this loan has no bearing upon the division of family property and debt, because it represents both an asset of the Corporation in which they each have half ownership as shareholders, and a family debt they share equally. I will therefore say no more about this loan.
- [371] The respondent testified that in purchasing the former family home as joint tenants, his intention was that he and the claimant would live in it together as their home, as the claimant was his trusted life partner.
- [372] The parties lived in the former family home from August 2020 until their separation one year later. The respondent continued to reside there until June 2024, when it was sold for about \$2,250,000. After paying off the mortgage, the line of credit and various adjustments, the net proceeds of sale were \$1,028,540.71. Of this amount, each party received \$514,274.76, to be held in trust by their respective lawyers. By mutual consent, each party has since received an advance of \$155,000 from the amount held by their lawyer.
- [373] Where one spouse transfers excluded property to the other spouse, the question arises as to whether it remains excluded or instead becomes family property.
- [374] The intention of the transferring spouse is the key to answering this question. If that spouse intended the transferred property to be a gift, and there is no agreement otherwise, it will become family property. See *Venables v. Venables*, 2019 BCCA 281 at para. 95; *Namdarpour v. Vahman*, 2019 BCCA 153 at paras. 25-40; *Brazinski v. Brazinski*, 2023 BCCA 359 at paras. 40, 72-73; *Cphoon v. Stobo*, 2023 BCCA 479 at paras. 15-18, leave ref'd 2024 CanLII 76324 (S.C.C.).

- [375] The court must consider all the circumstances, including both direct and indirect evidence, to determine the transferor's intentions. Evidence arising after the transfer may be considered if relevant to the transferor's intent at the time of the transfer, but must be reviewed critically. See *Namdarpour* at para. 40; *Cphoon* at paras. 20-22.
- [376] The presumption of advancement has been abolished for proceedings started after May 11, 2023: Family Law Amendment Act, S.B.C. 2023, c. 12; *Dignard (BCCA)* at para. 30. This litigation was commenced prior to that date. Regardless, I can resolve the issue of whether the exclusion was lost without relying on the presumption of advancement.
- [377] The evidence firmly establishes, and the respondent concedes, that in making the claimant half owner of the Corporation, and in subsequently using the Corporation's funds to buy the former family home with her as joint tenants, the respondent intended to gift to the claimant his excluded property as reflected in the value of his shares at the time of the marriage.
- [378] That is, by entering into these transactions the respondent intended that he and the claimant would own the Corporation and the former family home in combination, as a pooled resource of their marriage. He thus intended that his excluded property as reflected in the value of his shares at the time of the marriage be gifted to the marriage as an entity to which both parties belonged. See *S.A.T. v. D.I.T.*, 2022 BCSC 1176 at paras. 198-199; *World v. World*, 2021 BCSC 1177 at para. 18.
- [379] The Family Law Amendment Act has modified s. 85 of the FLA so that excluded property now retains that status despite any transfer of legal or beneficial ownership from one spouse to the other. Once again, however, this modification applies only to proceedings commenced after May 11, 2023, at least absent an agreement by the parties to the contrary. There being no such agreement in this case, the respondent is unable to rely on this modification with respect to the excluded property in issue.
- [380] The respondent nonetheless argues that the parties' family property should be divided unequally under s. 95 of the FLA so as to "back out" or return to him the roughly \$282,000 in excluded property that he contributed to the purchase of the former family home.
- [381] The respondent says an equal division would be significantly unfair to him, because the claimant would receive a windfall equal to one-half of the \$282,000, or \$141,000, earned and saved by him before the marriage. He says that denying the claimant this windfall is further supported by the short duration of the marriage and the fact that she came into the marriage with no financial assets. The respondent submits that dividing the family property unequally by backing out the \$282,000 would still leave the claimant substantially better off at the end of the marriage than she was at its beginning.
- [382] Before addressing the merits of the respondent's argument, I will review some general legal principles pertaining to the application of s. 95(1) where a spouse has gifted excluded property to the marriage by using it to help purchase a family home or other family asset.

- [383] Comparing the parties' respective contributions to family property is generally discouraged, though not prohibited, when considering unequal division under the "any other factor" heading in s. 95(2)(i): *Rana v. Ullah*, 2022 BCCA 192 at para. 48; *Jaszczewska* at paras. 38, 41 and 44. Cases where an unequal contribution by one spouse meets the significantly unfair threshold have thus involved marked, prolonged, and intentional or unexplained disparities in the contributions to family burdens: *Khan v. Gilbert*, 2019 BCCA 80 at paras. 32 and 36.
- [384] The origins of family property as formerly excluded property contributed by one spouse can be considered in determining whether equal division would be significantly unfair. The degree of attention paid to this factor will depend on the circumstances. See *Venables* at paras. 100-102, 110-112, 122.
- [385] Formerly excluded property is not, however, a separate category from other spousal contributions to family finances, and receives no more weight than other types of contributions. While the origins of family property as formerly excluded property may thus be considered as a factor, the focus under s. 95(2) is on the extent of the contribution made by the spouse taking into account all the relevant circumstances, including the factors specifically identified in the provision. The fact that formerly excluded property becomes family property does not, by itself, render an equal division unfair, let alone significantly unfair. See *Hannon v. Hopson*, 2022 BCCA 314 at para. 76-84.
- [386] Applying these principles here, I conclude that dividing the parties' family property equally, without backing out the respondent's contribution of his formerly excluded property to the purchase of the former family home, would not cause him significant unfairness. I would come to the same conclusion were I to focus more specifically on whether an equal division of the net proceeds of the former family home would cause the respondent significant unfairness.
- [387] I recognize that only the respondent brought any assets into the relationship, about \$282,000 in the form of the value of the Corporation's shares at marriage, and that he contributed this entire amount to buying the former family home. I also recognize that this is not a case where that contribution of formerly excluded property was materially offset by financial contributions or improvements made by the other spouse. And I appreciate that the parties were married for only three years, and that the formerly excluded property did not become family property until November 2019, which is only 22 months before the relationship ended. These factors weigh in favour of the respondent's position.
- [388] But the claimant made contributions to the respondent's career, at the expense of her own, by taking on the role of full-time caregiver for N.A. The claimant also moved to Canada from Egypt as part of her commitment to the marriage, which meant giving up the likely prospect of running a pharmacy purchased by her parents and taking on the significant task of obtaining accreditation as a pharmacist in a new country. See *Mills v. O'Connor*, 2025 BCCA 34 at 144; *Healey* at para. 75.

- [389] In these circumstances, I do not view the claimant receiving one half, or \$141,000, of the respondent's contribution of formerly excluded property to the purchase of the former family home as a "windfall". It can just as reasonably be viewed as the result of the respondent sharing half his pre-marriage savings with the claimant in recognition of the financial sacrifices and financial risks taken on by her in moving to Canada while pregnant with N.A.
- [390] In hindsight, it could perhaps be argued that this trade-off was unfair to the respondent, given the short duration of the marriage, but even assuming this argument to be persuasive, I do not view the unfairness as significant within the meaning of s. 95.
- [391] This case is not like *Venables*, relied on by the respondent, where an equal division would leave the spouse who contributed the formerly excluded property in almost the same financial position as they were in at the beginning of the relationship. Rather, on the respondent's calculations an equal division would leave each party with about \$616,000, a substantial amount that is over double the property brought into the marriage by the respondent.
- [392] It is true that under the unequal apportionment suggested by the respondent, the claimant would receive about \$475,000, which is a considerable amount given that she had little in the way of assets when they married. However, having assessed all of the factors in s. 95, I do not view the claimant leaving the marriage with \$616,000 on an equal division of the parties family property as significantly unfair.
- [393] To conclude, I find that in making the claimant a half owner of the Corporation the respondent gifted to the family unit his excluded property of approximately \$282,000, and that he has not established that this amount must be backed out of the division of family property to avoid significant unfairness.

Spousal Support

- [394] The parties agree that the claimant is entitled to both retroactive and prospective spousal support from the respondent, but they disagree as to its amount. They also disagree about the duration of spousal support.
- [395] The claimant seeks a quantum of spousal support in the midrange based on the Spousal Support Advisory Guidelines (Ottawa: Department of Justice, 2008) [SSAG] formula, and for an indefinite duration, although in her written closing submissions she suggests the duration may end up being about seven years from the date of separation. The claimant asks that the parties review quantum and duration two years after the date of my order.
- [396] The respondent submits that the quantum of spousal support should be at the low end of the range, and the duration should be five years, which would result in an end date of August 2026.

- [397] The parties also disagree as to the extent to which employment income should be imputed to the claimant for the purpose of calculating spousal support. I have already addressed the issue of imputation with respect to section 7 expenses. My conclusion regarding that issue applies equally for spousal support, meaning that the claimant will have attributed to her an annual employment income of: (a) from July 2024 until August 2025, 70% of a pharmacist's starting full-time salary of \$77,000; and (b) from September 2025, 100% of that same starting full-time salary.
- [398] I will begin my discussion by reviewing some of the relevant legal principles, after which I will determine the respondent's spousal support obligations, focusing on the issues of quantum and duration.

Legal Principles

- [399] The provisions governing spousal support under the Divorce Act and FLA are largely overlapping, and the conceptual basis underlying both statutes is the same: *Zilic v. Zilic*, 2021 BCCA 107 at para. 21.
- [400] Pursuant to s. 160 of the FLA, one spouse has the duty to provide support for the other spouse where entitlement is established based on the objectives in s. 161. Those objectives are:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [401] Section 15.2(6) of the Divorce Act states that these same objectives apply in determining entitlement to spousal support under s. 15.2(1) of that statute.
- [402] The objectives set out in the FLA and Divorce Act encompass three conceptual bases for spousal support: compensatory, non-compensatory or needs based, and contractual. See *Parton v. Parton*, 2018 BCCA 273 at para. 43.
- [403] The nature and purpose of compensatory and non-compensatory spousal support is described in *Chutter v. Chutter*, 2008 BCCA 507, leave ref'd 2009 CanLII 27232 (S.C.C.):
- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model

of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (Bracklow, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (Moge, at 861-863; Bracklow, at para. 39).

- [54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.
- [404] In the context of non-compensatory spousal support, "need" is a flexible and relative concept, which covers more than the basic necessities of life and varies with the parties' circumstances. Those circumstances include the length of the relationship and the marital standard of living. See Chutter at paras. 54-61; Parton at paras. 39-40; Healey at para. 61.
- [405] If entitlement is established, s. 162 of the FLA and s. 15.2(4) of the Divorce Act provide that the amount and duration of spousal support must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the length of time they lived together, the functions performed by each spouse during that time, and any agreement between them relating to support.
- [406] A spouse's means includes their capital base, employment income or earning capacity and any other available sources of benefits or gains: Parton at para. 43. But if the spouse seeking support must encroach on their capital to maintain a standard of living comparable to that enjoyed during the marriage, they are suffering hardship, since the capital will deplete over time and eventually leave them in a worse position than had the marriage continued: Chutter at para. 90.
- [407] The SSAG is a useful tool in determining the amount and duration of spousal support: Chutter at para. 100. A substantial departure from the SSAG amounts requires exceptional circumstances, and should be accompanied by an explanation: *Sebok v. Babits*, 2022 BCCA 2 at paras. 24-26.
- [408] The SSAG formula is no longer presumptive once the payor's income exceeds \$350,000. But where that income is not too far above \$350,000, the formula will often be used to determine the amount of spousal support, with outcomes falling in the low to mid range: *Eldridge v. Eldridge*, 2024 BCCA 21 at para. 62; *Sea v. He*, 2024 BCCA 161 at paras. 141-147. In this case, neither party suggested that the SSAG formula be departed from by reason of

the respondent's income sometimes exceeding \$350,000, no doubt because it has never gone too far above that ceiling.

Entitlement, Duration and Amount

- [409] The parties agree that the claimant is entitled to spousal support. So do I.
- [410] She has an entitlement on a compensatory basis, because she put her career opportunities as a pharmacist on hold to assume greater child rearing and household responsibilities, both during the marriage and after separation. Her doing so conferred at least some concomitant benefit on the respondent, especially during the period where he was able to work long hours, thus building his career on a full-time basis.
- [411] In assessing the claimant's entitlement to compensatory support, I have found helpful the discussion in SSAG, at Chapter 8.1, pp. 72-74, as well as in the Spousal Support Advisory Guidelines: The Revised User's Guide (Ottawa: Department of Justice, 2016) [RUG], at Chapter 8(n), pp. 43-45. I recognize, however, that SSAG and RUG are not binding upon me: *Forrest v. Aerin*, 2022 BCCA 184 at para. 89; *Roeske v. Roeske*, 2023 BCCA 358 at para. 66-79.
- [412] The claimant is also entitled to support on a non-compensatory basis, because on the breakdown of the relationship her lack of an income made it impossible to enjoy the same standard of living experienced during the relationship, whereas prior to separation she was able to rely on the respondent's substantial income.
- [413] Moving on from entitlement, the respondent emphasizes that the "age-of-children test" described in SSAG puts the lower end of the duration for spousal support at the date when N.A. starts school full-time, which is four years after separation, with the upper end being when she finishes high school seventeen years after separation: SSAG at Chapter 8.5.3, p. 84. He opposes an order for indefinite duration and instead seeks termination of spousal support five years after separation, which is one year after N.A. begins full-time schooling.
- [414] However, as noted in the part of the SSAG on which the respondent relies, even in cases involving a shorter marriage the initial support order will often be indefinite, because the determination of self-sufficiency remains an individualized decision, and any time limit will typically only appear after a review or variation hearing, especially in cases involving young children. See SSAG at Chapter 8.5.3, pp. 84-85, as well as at the more focused discussion of the "problem" of short marriages with young children at Chapter 8.5.8, pp. 86-87.
- [415] RUG elaborates on this point at Chapter 8(n), pp. 43-44, noting that a rote acceptance of the lower end of the range in "with child support" cases where the marriage is short, and the recipient is the primary caregiver, will only rarely be the right outcome at the initial hearing, with the vast majority of orders being indefinite albeit usually with the requirement of a review. Too quickly defaulting to the lower end of the range, says RUG, may be inappropriate given that these are usually cases with strong compensatory claims deriving less from past disadvantage and more from future disadvantage for the parent

with primary care of the children.

- [416] This does not, however, mean that fixing an initial time limit at or near the lower end of the temporal range is never appropriate. The court must consider whether doing so is justified in the circumstances of the case, including the employment status of the recipient and their ability to return to the paid labour market: see, e.g., SSAG at Chapter 8.5., p. 87. As stated in RUG, at Chapter 8(n), p. 44:

The imposition of short time limits in these cases reflects a failure of compensatory analysis. A more careful approach is needed. The most obvious area for such analysis would be the basic formula cases, where the recipient continues with a disproportionate share of child care going forward. In the more complex custody cases, like shared, split, hybrid or step-child cases, there may be circumstances that warrant shorter time limits, especially the step-child cases. A short time limit would normally mean a quick "bounce back" by the support recipient, someone with pre-existing skills who can find good employment reasonably quickly and become truly "self-sufficient."

[italicized emphasis in original, underlined emphasis added]

- [417] In this case, we have already reached the bottom of the lower end of the range for duration, as N.A. will start school full-time next month, in September 2025.
- [418] Given all the circumstances, I have concluded that the claimant's spousal support should end in August 2026, which is five years after the date of separation.
- [419] A key factor in reaching this conclusion is that, as explained in the part of these reasons where I have imputed income to the claimant, she is still quite young, proficient in English and has pre-existing skills, is healthy, intelligent and motivated to find work as a pharmacist, and will be able to find good employment in that profession. To the minimal extent the claimant might require encouragement to find a full-time position, ending spousal support about a year from now will have that effect, thereby promoting self-sufficiency.
- [420] In so concluding, I find the case relied on by the claimant, *Ducharme v. Rempel*, 2016 BCCA 198, to be distinguishable. There, the parties were spouses for about 28 months, and at separation had a 12-month old child. The father unsuccessfully appealed the trial judge's holding that spousal support should run for about 6.75 years from the date of separation; i.e., a little less than two years above the lower end of the range provided by SSAG.
- [421] However, the mother in *Ducharme* appears to have been in a more disadvantaged position than is the claimant here. She had left high school part way through grade 12 and had a work history involving mostly unskilled and relatively low paying jobs. Furthermore, her ability to pursue self-sufficiency given her primary childcare responsibilities was made more difficult by the respondent's work schedule. To the extent the result in *Ducharme* regarding duration is materially different from the one I have reached here, it is thus distinguishable.

- [422] I will next consider where within the SSAG range the quantum of spousal support should fall.
- [423] I reject the respondent's submission that support at the low end of the range is justified because the claimant has a weak compensatory claim due to the shortness of the marriage. This argument has pull only with respect to the non-compensatory claim. But the claimant's role as primary caregiver following N.A.'s birth, and her continuation in that role after separation, gives her a strong claim for compensatory spousal support.
- [424] Granted, the strength of that claim has diminished with the passage of time after separation, in particular from the point at which I have found that she could reasonably have obtained a job as a pharmacist. But it has not been completely extinguished, including because I have concluded that it would have been reasonable for her to work only part-time between July 2024 and August 2025.
- [425] The respondent has not argued that concerns about his needs, ability to pay or work incentives, or fallout from property division and debts, militate towards a lower amount of spousal support, and in any event on the evidence I do not find this to be the case.
- [426] Having considered all of the relevant factors, I have concluded that the respondent should pay spousal support at the SSAG midrange.
- [427] As noted, the respondent does not object to paying retroactive spousal support to the date of trial. I therefore order that he do so at the SSAG midpoint based on the parties' incomes in each of the years in question, including the income I have imputed to the claimant for 2024 and 2025: A.R. v. M.E.R., 2022 BCSC 509 at para. 82, aff'd 2023 BCCA 358, leave ref'd 2024 CanLII 15054 (S.C.C.).
- [428] DivorceMate indicates that the monthly amounts of spousal support payable by the respondent are: \$7,328 for September to December 2021; \$8,484 for 2022; \$10,548 for 2023; \$9,151 for 2024; and \$7,944 for January to April 2025. These amounts total \$399,284. Subtracting from this total the payments the respondent has already made, which the parties agree is \$258,360, he owes the claimant \$140,924 in retroactive spousal support, which will be paid to her from his share of the net proceeds of the sale of the former family home.
- [429] The claimant proposes that the amount of retroactive spousal be resolved through an "after tax" payment, which would avoid the parties having to refile their tax returns from 2021 to 2024. While this proposal may have some merit, I am not prepared to order it because there may be other tax consequences of which I am unaware: H.C.F. v. D.T.F., 2024 BCSC 574 at para. 133.
- [430] For ongoing spousal support in 2025, the amount will be calculated based on the respondent's income from 2024, and the claimant's imputed income of \$61,538. DivorceMate indicates that the respondent's prospective monthly spousal support payments will therefore be \$7,944 per month. To the extent the respondent is in arrears

because of the passage of time between the end of trial and the release of this judgment, those arrears will be paid to the claimant from the respondent's share of the net sale proceeds of the former family home.

[431] Since the respondent's income tends to fluctuate, the amount of spousal support in 2026 will be adjusted at the same time and through the same process as I have described regarding child support payments: A.R. at paras. 83-84.

Conclusion

[432] Subject to any errors in my calculations, set out below is a summary of my conclusions on the issues for determination in this matter, as well as some comments regarding costs.

Divorce

[433] The claimant and respondent, who were married in September 2018 in Egypt, are divorced from each other. The divorce will take effect on the 31st day after the date of this order.

Parenting Arrangements

[434] The claimant and respondent shall be the guardians of N.A. under s. 39(1) of the FLA. As guardians, they will share equally all of the s. 41 parental responsibilities for N.A. under s. 40(2) of the FLA.

[435] In carrying out these responsibilities, each party will have an obligation to advise the other of any matters of a significant nature affecting N.A. They will also have an obligation to discuss with one another any significant decisions that have to be made concerning N.A., and to try to reach agreement on those decisions.

[436] I am making a conduct order that each party:

- (a) will encourage N.A. to have a good relationship with the other parent and speak to N.A. about the other parent and that other parent's family members in a positive and respectful manner;
- (b) will make a real effort to maintain polite, respectful communications with the other parent, refraining from any negative or hostile criticism, communication or argument in front of N.A.;
- (c) will encourage their family members to refrain from making any negative comments in front of N.A. about the other parent and that other parent's family members, or any comments pertaining to this family law litigation;
- (d) will not discuss with N.A. any inappropriate adult, court or legal matters;
- (e) will not involve N.A. in arrangements regarding the payment of child or spousal support; and

(f) will not blame, criticize or disparage the other parent to N.A.

[437] The parties will participate in co-parenting counselling by a psychologist or registered clinical counsellor. The retainer of the psychologist or registered clinical counsellor will occur on the following terms:

- (a) If the parties are unable to otherwise agree on which counsellor is to be retained, the selection will be made by the claimant providing the respondent with the names of three psychologists or registered clinical counsellors who are willing and available within a reasonable time to work with the parties, and the respondent will promptly choose one name from that list.
- (b) The parties will attend at least six and, subject to the direction of the counsellor, up to twelve sessions of counselling.
- (c) The cost of each counselling session will be borne by the parties in the same proportion as is then being used to determine their respective share of section 7 expenses.
- (d) All communications with the counsellor, other than routine communications as to the retainer and scheduling appointments, will remain confidential, with the exception that each party may waive the confidentiality of communications with the counsellor as to only their own treatment, including but not limited to their completion of any therapy, exercises, or treatment prescribed, recommended or administered by the counsellor, and in the event that one party chooses to waive such confidentiality no adverse inference will be drawn should the other party choose to maintain their own right of confidentiality.
- (e) The counsellor shall be provided with a copy of these reasons and the entered order reflecting these reasons.

[438] N.A. will attend counselling with a psychologist or registered clinical counsellor, the focus of which will be on any anxiety or distress experienced by N.A. including with respect to parenting exchanges, and more generally on the impact on N.A. of any matters related to the parties' family law dispute. The retainer of the psychologist or registered clinical counsellor will occur on the following terms:

- (a) If the parties are unable to otherwise agree on which counsellor is to be retained, the selection will be made by the claimant providing the respondent with the names of three psychologists or registered clinical counsellors who are willing and available within a reasonable time to work with N.A., and the respondent will promptly choose one name from that list.
- (b) The counsellor is at liberty to determine the frequency and duration of counselling meetings so as to align with N.A.'s best interests.
- (c) Neither party is to have any communication with N.A. about any counselling session in the absence of the counsellor.

- (d) The cost of each counselling session will be borne by the parties in the same proportion as is then being used to determine their respective share of section 7 expenses.

[439] Within 21 days of this judgment, the parties will retain a parenting coordinator for a minimum term of 24 months. If the parties are unable to otherwise agree on which parenting coordinator is to be retained, the selection will be made by the claimant providing the respondent with the names of three parenting coordinators who are willing and available to work with the parties, and the respondent will promptly choose one name from that list.

[440] The parenting coordinator may assist the parties in the following manner:

- (a) by building consensus between the parties, including through:

- i. developing and instituting guidelines for the implementation of the parenting terms of my order;
- ii. developing and instituting guidelines for communications between the parties;
- iii. identifying, creating and implementing strategies for resolving conflicts between the parties; and
- iv. providing information respecting resources available to the parties for the improvement of their communication or parenting skills;

- (b) subject to the specific provisions of this order and pursuant to s. 18 of the FLA and s. 6 of the Family Law Act Regulations, B.C. Reg. 347/2012, and in the event the parties cannot agree on any matter respecting their parenting responsibilities as defined in s. 41 of the FLA, by making a determination on such matters subject to s. 19 of the FLA.

[441] The parties will each contribute \$10,000 from their equity in the sale proceeds of the former family home to meet the cost of retaining the parenting coordinator, to be held in trust for that purpose by one or both of their counsel, the parenting coordinator, or another mutually agreed upon person.

[442] The fees, disbursements and other charges of the parenting coordinator will be shared equally by the parties, or as allocated by the parenting coordinator who is granted the authority to order a different fee or cost allocation on consideration of the circumstances including the parties' respective incomes, the source, nature and frequency of the issues that the parenting coordinator is asked to determine, and the parenting coordinator's assessment of the reasonableness of the positions taken by each party.

[443] With respect to parenting time:

- (a) until further order of the court or written agreement between the parties:
- i. N.A. will reside primarily with the claimant, who will have parenting time with N.A. unless the respondent is exercising parenting time; and

- ii. the respondent shall have parenting time with N.A. on Tuesdays from 5:00 p.m. to Wednesdays at 2:30 p.m., and Fridays at 2:30 p.m. until Saturdays at 7:00 p.m.;
- (b) either party may apply to the court for a review of parenting time at any time after one year from the date of these reasons without having to meet the thresholds in s. 47 of the FLA or s. 17(5) of the Divorce Act.
- [444] If it turns out that N.A.'s school day finishes at a time other than 2:30 p.m., the terms in the above paragraph should be adjusted accordingly.
- [445] If either party seeks a parenting time review, I strongly suggest but do not order that the parties consider obtaining a s. 211 report or a report or letter from a child support professional, in particular N.A.'s counsellor, and provide the recommendations or comments of the professional to the court.
- [446] While I am not seizing myself of a further parenting time review, if that review takes place within three years of this judgment and the parties so request I will attempt to make myself available to hear it subject to scheduling availability.
- [447] The term in the consent order, made on April 26, 2024, that the parties will communicate with each other by email and only with respect to parenting arrangements regarding N.A., is vacated and replaced by the following term:
- (a) the parties will communicate with each other by email and only with respect to parenting arrangements regarding N.A., except as provided for in clauses (b) to (e) immediately below;
- (b) the parties may communicate by phone or text in the case of emergencies;
- (c) the parties may communicate orally during the counselling sessions or parenting coordinator meetings provided for by my order;
- (d) the parties may communicate through counsel; and
- (e) provided they agree in writing, the parties may communicate in other ways and for other purposes, unless and until that agreement is withdrawn by one of them in writing.
- [448] Until further order of the court or written agreement by the parties, the claimant will hold N.A.'s passport, has leave to renew that passport as needed, and will be permitted to travel with N.A. to Egypt each year for up to 21 days in July or August, provided she gives the respondent: (i) at least 60 days' notice of her intention to travel; and (ii) her itinerary and contact information in Egypt at least seven days prior to leaving Canada. If the claimant's travel plans to Egypt with N.A. conflict with the respondent's access schedule, he will be provided with make-up access time.

Child Support

- [449] The respondent will pay the claimant retroactive table and section 7 child support from the date of separation on August 23, 2021 up to and including April 2025, which is when the trial concluded, minus the amounts he has already paid to the claimant with respect to table child support. The respondent will pay the amount owing to the claimant from his share of the net proceeds of the former family home.
- [450] In calculating these retroactive table and section 7 child support payments: (a) the respondent's income is \$289,893 for 2021, \$329,787 for 2022, \$410,913 for 2023, \$396,291 for 2024 and \$396,291 for 2025; (b) the claimant's employment income is \$0 for 2021, 2022 and 2023; (c) the claimant's employment income is imputed at \$27,000 for 2024 and \$61,538 for 2025.
- [451] The respondent will pay the claimant prospective table and section 7 child support starting in May 2025 based on his 2024 income of \$396,291 and the \$61,538 income I have imputed to her for 2025. Any arrears owing as at the date of my final order will be paid to the claimant from the respondent's share of the net sale proceeds of the former family home.
- [452] As long as N.A. 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 June 1 each year; and
 - (b) copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency immediately upon receipt.
- [453] The parties shall conduct a review of table and section 7 child support on an annual basis and payments shall be adjusted as necessary by July 1 of every year, except that the claimant's income will not be less than \$77,000 for the purposes of making any adjustments.

Division of Family Assets and Debt

- [454] Unless stated otherwise, the amounts referenced below will be paid from the paying party's share of the net sale proceeds in the family home.
- [455] The respondent will pay to the claimant \$49,460.19, which is one half of the amount he withdrew from the parties' line of credit after their separation.
- [456] The claimant will pay the respondent \$1,674.66, which is one half of her CRA refund for the 2021 tax year prorated for the portion of time they were married.
- [457] The respondent will pay to the claimant \$2,463, which is one half of the Corporation's CRA refund referable to July and August 2021.

- [458] The respondent will pay to the claimant \$11,955.66, which after deducting excluded property is one half of the total amount in his three Canadian bank accounts, one TFSA and one Egyptian bank account at the time of separation.
- [459] The respondent will transfer to the claimant by way of spousal rollover \$10,188.14, which is one half of the amount in his RRSP at the time of separation.
- [460] The respondent will pay to the claimant \$22,853.46, which is one half of total amount in the Corporation's bank accounts at the time of separation.
- [461] The respondent should receive \$7,771.99 from the net sale proceeds of the former family home, to account for his excluded property in the parties' joint bank account and their respective post-separation withdrawals from it.
- [462] The claimant will pay to the respondent \$3,427.18, referable to her portion of the respondent's tax liability at the time of separation.
- [463] The claimant shall cooperate in a timely way in providing whatever assistance is needed to remove her as a shareholder of the Corporation in a manner consistent with the division of family property and debts set out in this order.
- [464] The claimant shall pay to the respondent \$4,977.82 to compensate him for her portion of the post-separation property taxes he paid in relation to the former family home.
- [465] The claimant shall pay to the respondent \$3,294.37, to account for her portion of the post-separation repairs he made to that property.
- [466] Subject to any agreement by the parties regarding valuation, an appraisal shall be carried out to determine the fair market value of the Egypt Apartment as at the date of the marriage and the date of its disposition by the respondent, and the respondent shall pay to the claimant an amount equal to one half of any increase in value within 30 days of the appraisal being completed.
- [467] No part of the Hyundai Accent constitutes family property.
- [468] Dividing the parties' family property equally, as opposed to first deducting the respondent's contribution of his formerly excluded property to buy the former family home, would not cause him significant unfairness within the meaning of s. 95(1) of the FLA.

Spousal Support

- [469] The respondent's arrears of \$140,924 in retroactive spousal support covering the period from September 2021 to April 2025 will be paid to the claimant from his share of the net sale proceeds of the former family home.

[470] The respondent will pay post-trial spousal support only until and including August 2026. For 2025, his monthly spousal support payment will be \$7,944 per month. Any arrears owing as at the date of my final order will be paid to the claimant from the respondent's share of the net sale proceeds of the former family home.

[471] The respondent's monthly spousal support payments in 2026 will be adjusted at the same time and through the same process as I have described regarding child support payments.

Costs

[472] The parties are encouraged to agree on costs. If unable to do so, within 30 days of these reasons either party, or both parties, may contact Supreme Court Scheduling with a request to make submissions on that issue. It may be that the court will direct the parties to exchange and file written submissions, and after reviewing those written submissions will further determine whether oral submissions are also necessary.

"D. Layton J."

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