
CANADA / JUDGMENT

Farthing v. Farthing

2018 BCSC 879

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 879 Farthing v. Farthing

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Farthing v. Farthing,

2018 BCSC 879

Date: 20180530

Docket: E94265

Registry: Kelowna

Between:

Ashley Rachel Farthing

Claimant

And

Dana James Farthing and Guts Welding Ltd.

Respondents

Before: The Honourable Madam Justice Gropper

Reasons for Judgment

The Claimant, appearing in person:

A. Farthing

The Respondents, appearing in person:

D. Farthing

Place and Date of Trial/Hearing:

Kelowna, B.C.

January 10 to 12, 2018

Place and Date of Judgment:

Kelowna, B.C.

May 30, 2018

Introduction

- [1] Ashley and Dana Farthing met in 2003 and began living together in 2004. They have two children: the oldest born in 2005 and the youngest born in 2007. They were married in March, 2007 and they separated in December, 2011.
- [2] I granted a divorce on the last day of the trial in this matter on January 12, 2018, subject to s. 12 of the Divorce Act (Canada), R.S.C.1985, c. 3 (2nd Supp.) [DA] to take effect on the 31st day after the date of the order.

History of Proceedings

- [3] Ms. Farthing commenced this family proceeding in February, 2012. Between then and the trial, the parties had been in court on several interim applications. I have not included all of them, only those relevant to my consideration. I have not listed all of the orders made, only those relevant to my consideration. Master Young (as she then was) made the orders that follow.
- [4] On September 9, 2013, the first interim order was made. The order granted the children's primary residence with the mother, gave the father reasonable parenting time on weekly notice to the mother, and required the father to pay child support of \$2,500 per month in child support. The order required Mr. Farthing to make full financial disclosure within 30 days of the order.
- [5] On October 2, 2013, the court adjusted the child support to \$1,458 per month; set spousal support of \$1,042 per month; required Mr. Farthing to pay \$6,254.53 in past s. 7 Special and Extraordinary expenses in accordance with the Federal Child Support Guidelines (Guidelines)(s. 7 expenses) and defined s. 7 expenses as including medical and other health expenses not covered by insurance, group extended insurance, childcare, hockey school and hockey related equipment, dance classes and related clothing, and other expenses to which the parties might agree. The order required Mr. Farthing to provide financial disclosure, including a form F8 financial statement.

- [6] On May 14, 2014, the court again ordered Mr. Farthing to make financial disclosure, to make payment of arrears of support and s. 7 expenses. Certain orders related to Mr. Farthing's parenting time were also made.
- [7] On December 17, 2014 the Court ordered that:
- (a) the father pay child support of \$1,933 per month commencing January 1, 2015;
 - (b) the father produce his income tax returns, notice of assessments and financial statements of his closely held corporation, Guts Welding Ltd., by October 1 of each year;
 - (c) the father's obligation to pay child support would be adjusted annually on the 1st of January of each year; and
 - (d) the mother must file an F8 financial statement including a description of her income, her new partner's income, and the sharing of their expenses.
- [8] On January 12, 2015, the parties again appeared before Master Young. She ordered the following:
- (a) spousal support remained at \$1,042 per month, reviewable in one year;
 - (b) other orders dealt with the father's parenting time;
 - (c) other orders were made requiring the father to make full financial disclosure including filing his personal tax returns for 2015 and 2016 and his corporate tax returns for 2015;
 - (d) Mr. Farthing pay certain s. 7 expenses; and
 - (e) Ms. Farthing file form F8 financial statement.
- [9] On January 2, 2015, a further court order was made. It provided, amongst other things, that Mr. Farthing pay \$1,042.00 per month in spousal support. Other orders were made in respect of Mr. Farthing's parenting time.
- [10] The parties appeared before Mr. Justice Rogers on March 17, 2017. The father sought to reduce his spousal support and child support on the basis that his income had dropped after May, 2015 when he lost his main contract for welding work in the Alberta oil patch. This coincided with the collapse of petroleum prices. Mr. Farthing asserted that work dried up in the spring of 2015 and he has not had regular welding work since then. In the financial statement provided in respect of that application, he listed his current annual income of \$12,697.
- [11] There was limited disclosure made by the father to support his application for variation. In respect of spousal support and child support the court ordered:
- (a) The father's obligation to pay spousal support and child support was suspended, pending an interim or a final determination of the father's application to retroactively vary those obligations;

- (b) The father's application to retroactively vary his spousal support and child support obligations was adjourned to a date to be set. The application for an interim order may be reset upon production to the mother of the father's 2015 and 2016 personal and corporate tax returns and notices of assessment. If the interim application is not reset, the issue will be determined at trial.
- (c) The mother must, within 30 days of the release of these reasons, deliver to the father a current F8 financial statement. The mother's current F8 statement must include disclosure of the income of the mother's current partner and living companion and must describe those family expenses borne by the mother alone, by her partner alone, or shared between them and if shared in what proportion.
- [12] Further orders were made at a trial management conference held September 26, 2017, including that both parties file and serve updated F8 financial statements by October 20, 2017. Ms. Farthing filed her statement on October 24, 2017; Mr. Farthing prepared an incomplete F8 in January 2018. It does not give any amount for income earned in 2017. It was not filed, but it appears that it was provided to Ms. Farthing.

Issues at Trial

- [13] By the time that the trial commenced, the parties agreed to guardianship, custody and parenting time, which had been a great source of disagreement throughout the interim proceedings.
- [14] The issue that remains is the retroactive child support and s. 7 expenses, including for the period of suspension from March, 2017 to the present, and arrears, and the amount of child support prospectively. That issue involves the lack of financial disclosure by Mr. Farthing, Mr. Farthing's income, and whether income should be imputed to him.

Custody and Guardianship

- [15] Pursuant to section 16 of the DA and in the best interests of the children of the marriage (s. 16(8)), I grant Ms. Farthing sole custody of the children.

Guardianship and Parenting Responsibilities

- [16] Section 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] states that all orders for guardianship, parenting arrangements or contact with a child must be made with consideration of only the best interests of the children. Throughout the separation period, the children have resided with their mother. She has made all of the parenting decisions. They are clearly bonded to her. Their relationship with their father has been up and down.
- [17] The parties have agreed to guardianship and parenting responsibilities. Their agreement reflects the best interests of the children.
- [18] Pursuant to section 51 of the FLA, Ms. Farthing is appointed guardian of the children.

- [19] Ms. Farthing is also granted all parenting responsibilities under section 40 of the FLA.
- [20] The parties shall communicate by text messages. The messages shall be respectful at all times. The messages will concern the children only.
- [21] By January 15 of each year, the parties will exchange proposals for parenting for the forthcoming year via text message. By January 30 of each year, they will talk on the telephone and come up with Mr. Farthing's parenting schedule with the children. The schedule will take into consideration the children's activities.
- [22] For summer 2018, the parties have agreed that Mr. Farthing's parenting time for summer break shall be for two periods: July 7 to 14, 2018 and July 31 to August 6, 2018. He will pick up the children for each period at Save On Foods, Lake Country at 11:00 a.m. and shall drop them off at the same location at 4:00 p.m.
- [23] For winter break 2018-2019, the parties have agreed that Mr. Farthing's parenting time shall be from December 27, 2018 to January 2, 2019. The pick up and drop off shall be at the same times and place as for the summer break.
- [24] The parties may agree to Mr. Farthing exercising parenting time on long weekends, subject to the children's schedules. If Mr. Farthing intends to exercise parenting rights on a long weekend, he must give Ms. Farthing 72 hours notice of that intention. The long weekend will be for up to three days, unless otherwise agreed.
- [25] The parties may mutually agree to change to an alternate parenting time schedule. If they do, they must do so in writing.

Child and Spousal Support

Spousal Support

- [26] Ms. Farthing agrees that spousal support should cease on January 1, 2016. Mr. Farthing is not required to pay spousal support after that date.

Child Support

- [27] This is the outstanding issue between the parties.

Legal Principles

- [28] Part 7 of the FLA and section 15 of the DA deal with support obligations.
- [29] Section 146 of the FLA defines "child" to include "a person who is 19 years of age. Section 2 of the DA defines a "child of the marriage" to be:
- a child of two spouses or former spouses who, at the material time,
- (a) is under the age of majority and who has not withdrawn from their charge

- [30] Both the FLA (s. 150) and the DA (s. 15.1(3)) adopt the use of the Federal Child Support Guidelines, S.O.R./97-175 [Guidelines] to determine the appropriate amount of support.
- [31] The objectives of the Guidelines are set out in section 1 of the Guidelines:
- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
 - (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
 - (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
 - (d) to ensure consistent treatment of spouses and children who are in similar circumstances.
- [32] Orders for extraordinary expenses such as daycare and extra-curricular activities are made under section 7.
- [33] Both the DA and the FLA require that where an order for child support is sought, the parties must make full financial disclosure. The FLA requires that each party prepare a form F8, file it and provide it and accompanying documents to the other party.
- [34] The relevant sections are ss. 15-20 of the Guidelines, that provide:
- 15 (1) Subject to subsection (2), a spouse's annual income is determined by the court in accordance with sections 16 to 20.
- (2) Where both spouses agree in writing on the annual income of a spouse, the court may consider that amount to be the spouse's income for the purposes of these Guidelines if the court thinks that the amount is reasonable having regard to the income information provided under section 21.
- 16 Subject to sections 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total income" in the T1 General form issued by the Canada Revenue Agency and is adjusted in accordance with Schedule III.
- 17 (1) If the court is of the opinion that the determination of a spouse's annual income under section 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

- (2) Where a spouse has incurred a non-recurring capital or business investment loss, the court may, if it is of the opinion that the determination of the spouse's annual income under section 16 would not provide the fairest determination of the annual income, choose not to apply sections 6 and 7 of Schedule III, and adjust the amount of the loss, including related expenses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

18 (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or
 - (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.
- (2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

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

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;

- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
 - (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.
- (2) For the purpose of paragraph (1)(g), the reasonableness of an expense deduction is not solely governed by whether the deduction is permitted under the Income Tax Act.

20 (1) Subject to subsection (2), where a spouse is a non-resident of Canada, the spouse's annual income is determined as though the spouse were a resident of Canada.

- (2) Where a spouse is a non-resident of Canada and resides in a country that has effective rates of income tax that are significantly higher than those applicable in the province in which the other spouse ordinarily resides, the spouse's annual income is the amount that the court determines to be appropriate taking those rates into consideration.

[35] Section 19(1) of the Guidelines allows the court to impute such amount of income to a parent as it considers appropriate in the circumstances. One of the circumstances is that the parent is intentionally under-employed or unemployed. (s. 19(1)(a)). Because parents have a joint and ongoing legal obligation to support their children, a parent must earn what the parent is capable of earning. Section 19(1)(a) of the Guidelines requires that before income can be imputed, the court must find that the person is intentionally under-employed or intentionally unemployed. The court must consider not only the amount of income a spouse actually earns, but the amount that parent would earn if working to his or her capacity.

[36] The principles regarding the imputation of income were set out by Madam Justice Martinson in *Hanson v. Hanson*, [1999] B.C.J. No. 2532 (B.C.S.C.), at para. 14:

[14] The following principles apply when determining capacity to earn an income. (See Dr. Julien D. Payne, *Imputing Income*, "Determination of Income; Disclosure of Income", *Child Support in Canada*, Danrab Inc., August 3, 1999.)

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor." (*V. (J.A.) v. V. (M.C.)* [59 B.C.L.R. (3d) 395] at para 30.)
2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.

3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his or her children simply because the parent cannot obtain interesting or highly paid employment.
4. Persistence in unremunerative employment may entitle the court to impute income.
5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.

Mr. Farthing's Income

- [37] Because Mr. Farthing is the payor spouse, that is, the spouse who must provide support, it is only necessary for me to examine his income and address whether it accurately reflects his capacity to earn income. If it does not, I must impute income to him, to ensure that the children receive that amount of child support to which they are entitled.
- [38] Mr. Farthing began working in the Alberta oil patch when he was 18 year old. He had not completed high school - only reaching grade 9. His goal was to have his own business and have a portable welding truck. He has an Alberta ticket as a "B" pressure welder. He is a red seal journeyman welder. He accomplished that goal and for many years earned a high income, in spite of there never being a guarantee of work. He says that he has never worked at one place for 6 months.
- [39] At some point, Mr. Farthing incorporated Guts Welding Ltd. (Guts Welding). There is not much corporate information available, but according to Mr. Farthing, he is the only officer, director and employee of the company. It is a cash business. The only assets are automotive (a welding truck) and equipment required Mr. Farthing to perform his job. The year-end for the company is June 30.
- [40] Mr. Farthing says that in order to run a portable welding business you must have money in your bank account to operate for 45-90 days before being paid. In that period. Mr. Farthing's company must pay all of his expenses including travel, hotel expenses, fuel, food, and welding equipment.
- [41] Mr. Farthing says that he never kept any money to pay his taxes and has constantly been two years behind. He currently is in arrears of \$40,000 in personal and corporate taxes and \$20,000 in arrears of GST.
- [42] According to the Guts Welding's records, Mr. Farthing's total income (after deductions for expenses but not for tax) were:

2012 - \$95,000;

2013 - \$132,500;

2014 - \$135,700;

2015 - \$157,036;

2016 - \$26,910.

- [43] Mr. Farthing was laid off on May 5, 2015 and that was the last day that he worked with his welding truck. He says that that was "the worst shut-down in oil patch and it is still that way."
- [44] Since his layoff in 2015, Mr. Farthing has been looking for work in his field. He receives welder postings by email and he has sent out resumes since 2015 in the hopes of finding work. He has obtained work in the first two months of 2016, in Alberta, but he was fired from that job. He has tried to obtain employment as a welder (as opposed to self-employment), but he has been unsuccessful thus far. Mr. Farthing says that he has limitation that prevent him from getting jobs: he did not complete high school and his welding ticket is specialized. He does not have a BC ticket.
- [45] Mr. Farthing moved to Vancouver in April 2016. He continues to look for welding jobs. In the meantime, he has found work as an extra on films. He says that he has an agent and is working steady and enjoying what he is doing.
- [46] Currently, Mr. Farthing resides in Port Coquitlam with his new partner and their child. He pays rent of \$1,400 per month.

Mr. Farthing's Assets

- [47] Mr. Farthing has three vehicles. He is making payment on them of approximately \$400 per month. They are all subject to liens and he cannot sell any of them.

Arrears

- [48] Ms. Farthing registered with the Family Maintenance Enforcement Program (FMEP) in February, 2014 and by the end of that year, Mr. Farthing was fully paid up. Mr. Farthing did not make regular support payments or s. 7 expense contributions after that. In October 2015, Ms. Farthing received the last voluntary payment of child and family support from Mr. Farthing (with the exception of the payment referred to in the next paragraph). Since then Mr. Farthing has been delinquent in his payment of support and his share of s. 7 expenses.
- [49] Ms. Farthing acknowledges that Mr. Farthing gave her \$1,800 cash in December, 2017. The evidence from Mr. Farthing concerning this payment is:

In December 2017 I paid Ashley \$1800. I told her that was from a commercial that I was an actor in. The cheque stub isn't in [the documents that I have disclosed]. I didn't put all of my pay stubs in there. I had no money so I didn't report it because I didn't want FMEP to garnish it. The commercial paid me with a cheque for \$3500. There are no other payments that I didn't report - I always was truthful with Ashley - I told her that I made three grand.

Financial Disclosure

- [50] As noted in the interim orders, the determination of support, both child and spousal, generated many court applications. A continuing problem was the unwillingness of Mr. Farthing to make financial disclosure. The orders were very particular. They were repetitive. For the most part, they were not heeded by Mr. Farthing.
- [51] Mr. Farthing prepared an F8 in February, 2017 relating to his income in 2016. He claimed his income as \$12,697, but he did not include the income that he received through Guts Welding. I have referred to the F8 dated January, 2018: it contains no useful information.
- [52] Before the trial started, Mr. Farthing asked his accountant to provide updated financial statements for Guts Welding and tax statements for the company and Mr. Farthing, personally. The documents provided are not complete.
- [53] In respect of his personal taxes, Mr. Farthing provided his T1 General Income Tax and Benefit Returns for 2010-2014 and 2016. He provided notices of reassessment for 2014 and 2015. He provided a comparative tax summary for 2012-2016.
- [54] In respect of Guts Welding, Mr. Farthing provided corporate tax returns for 2014-2015 and 2015-2016. He produced some corporate financial statements including the income statement and balance sheet for Guts Welding for the year ending June 30, 2016. He provided Guts Welding bank account statements for the periods March 20 to April 1, 2011, February 10-16, 2012, April 26 to May 14, 2012 and for the period from March 26, 2016 to January 5, 2017.
- [55] Mr. Farthing produced some statements in respect of payments for his acting jobs, but they are not complete.

Positions of the Parties

Ms. Farthing

- [56] Ms. Farthing says that it has always been difficult to get Mr. Farthing to live up to his responsibilities for support of the family. Numerous applications were made to court and that had some effect, at least to the end of 2014.
- [57] Since October 2015, Ms. Farthing says:

I have had difficulties financially since November 2015. I support the kids solely - in spite of our agreeing that the kids are in sports. I had to ask my parents for help - that is not great. It is stressful - this man won't help me raise them and the burden has been entirely on me. Dana was making good money but the children and I have suffered financially.

[58] Ms. Farthing argues that Mr. Farthing has never provided full financial information, although some was forthcoming before the trial commenced. Even so, there are gaps in the disclosure: Mr. Farthing admitted to keeping or hiding income from FMEP. She was able to determine that he failed to disclose an income. There are no personal banking statements from Mr. Farthing or from his company.

[59] Ms. Farthing says that Mr. Farthing has provided some financial information, but there are still missing documents that raise questions about his income, for example, personal bank account statements.

[60] Concerning the financial disclosure that has been made, Ms. Farthing says that it demonstrates that Mr. Farthing has greater income than he has stated. She refers to documents prepared by Mr. Farthing's accountant for Mr. Farthing personally and for Guts Welding, in particular the summaries of financial information and income tax filings and the comparative tax summary for 2012-2016 and the balance sheet for Guts Welding as at June 30, 2016. Ms. Farthing questions some of the expenses and the amortization claimed. She also says that Mr. Farthing's income is derived from dividends, and that in 2016, he received dividends of \$83,000.

[61] Ms. Farthing says that Mr. Farthing is underemployed. She has provided many job postings to him that accommodate his skills, but he has not found remunerative employment. Ms. Farthing asserts, based on hourly wages available to welders from the job postings that she has provided, that Mr. Farthing should be earning between \$57,500 and \$80,000 per year.

Mr. Farthing

[62] Mr. Farthing says he understands his responsibility to support his children, but since 2015 he has been in debt and unable to reach anywhere near the level of income that he had before. His debts include loans on vehicles and unpaid income taxes. He says that he has been hit hard by the financial crisis. He has experienced depression from that and from all the court appearances, as well as "FMEP taking 50% of my money."

Analysis and Decision

[63] I accept that the collapse of oil prices and the fallout that it brought on employment for workers in the oil and gas industry in Alberta had a serious impact on Mr. Farthing. There is no doubt that his income was reduced dramatically and has not improved to the level it was pre-2015.

- [64] I also accept that Mr. Farthing is not familiar with financial documents and is not in a position to explain the records that he has provided. He had a steady source of income for many years, and he was not financially responsible. He did not pay his taxes on time, but was able to eventually because he had the financial security of a good paying long term source of income. He did not need to finish high school or improve his credentials either, because he could depend on a high steady income.
- [65] I also accept that the financial security that he enjoyed was dealt a harsh blow in 2015.
- [66] The problem however, is that Mr. Farthing has not been forthcoming about his financial situation. He was ordered to provide financial disclosure from the time this family law action commenced, but he did not do so until the trial was about to commence. Even then, he provided some disclosure but not sufficient disclosure to demonstrate that he is telling the truth about his income.
- [67] He had three years to improve his financial circumstances but he has not done so. He has engaged in an occupation (acting) that has not been particularly remunerative, according to him.
- [68] Ms. Farthing has identified those areas where the documentation is deficient. Where he has disclosed documents, it demonstrates that Mr. Farthing has greater income than he is prepared to admit.
- [69] Section 16 of the Guidelines provides that a spouse's income is the amount set out under "total income" on the T1 General form. The most recent T1 is from 2016. It specifies an income of \$30,659.83. I cannot base a finding that Mr. Farthing's income is that amount: it is two years ago.
- [70] Section 17 refers to a pattern of income over the last three years. Again, I do not have the financial documentation to determine that.
- [71] Section 18 is the most applicable provision: Mr. Farthing derived his income through his corporation. The financial records go up to June, 2016. They show that Guts Welding's sales for June 30, 2015 to June 30, 2016 were \$50,354.24. Mr. Farthing said that the only income that Guts Welding had in that period was for a few months of work in early 2016. His expenses are \$48,169.11. I have reviewed his expenses and question a travel expense of \$21,000; rent of \$3,600, which he deducted for each year, including for 2016 when he only worked a few months. His bank charges are about double what he claimed in other years. His promotion and entertainment is about one-half of what he claimed in other years. Generally, I consider that some of his expenses should be added back into income.
- [72] When I review Mr. Farthing's balance sheet for the year ending June 30, 2016, I note that he received dividends of \$83,000. This does not mean that he received those entirely in 2016, but over the year June 30, 2015 to June 30, 2016. I noted earlier that Mr. Farthing's income was derived from dividends from his company. I do not have a financial statement from 2015; or a T2 corporate tax return for 2015 or a personal tax return for 2015. Mr. Farthing

cannot explain why not. It is his obligation to explain when these dividends were paid to him. His 2016 personal tax return shows a dividend income of \$26,910. Mr. Farthing suggests that this may be a typographical mistake. Ms. Farthing asserts that I must find that he has taken more money from the company than he has admitted. I must reach that conclusion, as there is no contrary explanation.

- [73] It is clear that Mr. Farthing has not disclosed all of the statement that he has from working as an extra. He admitted that he received \$3,500 in December, 2017. He told Ms. Farthing that he made three thousand, which is not true. The statement reflecting the payment of \$3,500 has not been disclosed. I must deduce that Mr. Farthing has not disclosed all of his income from his work as an actor.
- [74] Mr. Farthing's 2018 F8 does not provide any amount for income. I note Mr. Farthing's monthly expenditure income of \$400 for car payments and \$1,400 per month in rent. His financial obligations are at a minimum, \$1,800 per month or \$21,600 a year. He must earn significantly more than that, but he refuses to advise what he does earn.
- [75] Ms. Farthing provided a series of job postings that meet Mr. Farthing's qualifications. Mr. Farthing says that he is not qualified for any of them. As noted, he maintains that he has looked for work as a welder for many years without success. He has not provided any documentation to support that.
- [76] In respect of his acting career, I find that Mr. Farthing is under-employed. He has found alternative work that he enjoys, but his obligation is to work to his capacity. I find that he is not. Further, I have determined that he has not been forthcoming about the income he derives from that work.
- [77] Child support is based upon the payor's annual income. It is not based on a parent's debts to Canada Revenue or otherwise. The fact the Mr. Farthing has chosen to incur significant debt does not affect what his children are entitled to as child support. I therefore do not take this into account in determining Mr. Farthing's income.
- [78] Based upon the considerations above, the provisions of the Guidelines and applying the legal principles that I have outlined, it is my conclusion that Mr. Farthing's income should be imputed, based upon an average between the two amounts proposed by Ms. Farthing: \$68,750 per year. This will be the basis of retroactive child support and arrears will be calculated on that basis. It is also the basis upon which retroactive spousal support and arrears shall be calculated up to January 1, 2016.
- [79] The order of Rogers, J. suspending support from March 2017 is varied to provide that child support from that date is payable monthly on the basis of Mr. Farthing's imputed income.
- [80] In respect of s. 7 expenses, Ms. Farthing calculates them at \$674.50 per month and seeks that Mr. Farthing pay 50% of them. That will be the basis of the calculation of s. 7 expenses retroactively and prospectively.

- [81] If and when Guts Welding begins operating, Mr. Farthing will advise Ms. Farthing immediately and provide to her all of the financial information regarding the company on an annual basis, on or before September 15.
- [82] In the event that Mr. Farthing becomes employed full time, he will advise Ms. Farthing immediately and provide his T4 income statement to her within 10 days of his receiving it from his employer.
- [83] Ms. Farthing will advise Mr. Farthing of any change to the s. 7 expenses, including receipts. Mr. Farthing is obligated to pay 50 % of those expenses.

Conclusion

- [84] I have imputed income to Mr. Farthing. That imputed income will be the basis for the determination of spousal and child support retroactively and prospectively. Mr. Farthing is also responsible for payment of one-half of the s. 7 expenses, retroactively and prospectively.
- [85] Ms. Farthing will draft the formal order and provide to Mr. Farthing and to the court. Mr. Farthing's signature on the order is dispensed with.
- [86] The parties are entitled to make submissions orally or in writing in respect of any matter related to the implementation of these orders.
- [87] As Ms. Farthing had been successful in this trial, she is entitled to her costs at scale B.

"Gropper J."

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