

CANADA / JUDGMENT

Goldman v. Goldman

2024 BCSC 2353

COURT

Supreme Court of British Columbia

DECIDED

23 December 2024

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2024 BCSC 2353 Goldman v. Goldman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Goldman v. Goldman,

2024 BCSC 2353

Date: 20241223

Docket: E16957

Registry: Chilliwack

Between:

Christina Anne Goldman

Claimant

And

Michael Bruce Goldman

Respondent

Before: The Honourable Justice Dion

Reasons for Judgment

In Chambers

The Claimant appearing on her own behalf:

C.A. Goldman

Respondent appearing on his own behalf:

M.B. Goldman

Place and Date of Hearing:

Abbotsford, B.C.

October 10, 2024

Place and Date of Judgment:

Chilliwack, B.C.

December 23, 2024

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I. Overview

- [1] Christina A. Goldman ("Ms. Goldman") filed a notice of application on March 24, 2023 ("March 2023 Application"), seeking, among other things, retroactive variation of child support and spousal support ordered by this Court on December 21, 2010 for the years 2011 to 2021. The basis for the variations being sought is the respondent Michael B. Goldman's ("Mr. Goldman") actual employment income for these years.
- [2] In his amended response filed July 5, 2023, Mr. Goldman submits that any spousal support award should be limited in two ways. First, he says his income increased post separation as a result of his extraordinary efforts to pay off his arrears that were incurred as a result of incorrect calculation of his income in 2010. Second, now, in his early 60's, he is of poor health, has limited savings, and his ability to work is unknown.

II. Procedural History

- [3] On December 21, 2010, Justice Fisher issued a decision with pertinent findings and various final orders related to ongoing child support and spousal support subject of the March 2023 Application ("Fisher Orders"). Justice Fisher's decision is indexed at 2010 BCSC 1835 ("Fisher Decision").
- [4] On August 4, 2023, Justice Walkem issued a decision with various orders related, among other things, to retroactive and ongoing child support ("Walkem Orders"). She also made findings as to Mr. Goldman's income from 2011 to 2021. Justice Walkem's decision is indexed as 2023 BCSC 1355 ("Walkem Decision").
- [5] Justice Walkem adjourned the issue of retroactive and prospective spousal support generally due to trial time constraints.

- [6] I heard the application for retroactive and prospective spousal support on October 10, 2024. Mr. Goldman participated only for approximately one and-a-half hours via MS Teams. The remote connection was lost with Mr. Goldman in the late morning. Several attempts were made to call Mr. Goldman from the courtroom. The registry staff also made several unsuccessful attempts to reach Mr. Goldman. He did not attempt to rejoin the hearing for the rest of the day. Since the matter was heard by way of a summary trial, and affidavits and other material, including financial information to be relied on, had been filed, I decided to continue with the application. Mr. Goldman made submissions on October 10, 2024 which are addressed here.

A. Background

- [7] The parties were married on September 1, 2000. Their son, J.G. was born in 2001. He is now 23 years old. Ms. Goldman and Mr. Goldman separated on November 6, 2006. In early 2007, Ms. Goldman moved with J.G. from the family home in Parksville to North Vancouver, B.C. The parties divorced on December 21, 2010. Mr. Goldman was born in 1961, he is 63 years old. Ms. Goldman was born in 1965, she is now 59 years old.

- [8] Both the Fisher Decision and the Walkem Decision found that J.G. is significantly disabled. He requires full-time care provided by Ms. Goldman. J.G. was born with Treacher Collins Syndrome, a genetic condition he has suffered from since birth, which impacts his craniofacial development. Justice Walkem found this has resulted in,

severe difficulties breathing, swallowing, chewing, hearing and speech. Additionally, J.G. has been diagnosed with autism and suffers from anxiety. He requires a bone conduction hearing aid, a tracheostomy tube to assist with his breathing, and a gastric feeding tube. The tracheostomy and gastric tubes are at risk of infection, among other complications. Though the rest of his body and his intellect are not impacted by the TCS diagnosis, J.G. requires constant care. Ms. Goldman has been J.C.'s primary caregiver since birth.

- [9] In the within hearing, Ms. Goldman's evidence is the same. J.G. is in her constant care, 24/7. She is required to devote herself entirely to his regular day-to-day care.

- [10] In August 2020, J.G. was designated as person with a disability. He receives a Persons with Disability ("PWD") disability benefit of approximately \$1,400 per month. Aside from the PWD benefit, the child and spousal support provided by Mr. Goldman has been the primary source of support for Ms. Goldman and J.G.

- [11] Justice Fisher found that after Ms. Goldman and Mr. Goldman separated, Mr. Goldman had only occasional access. This was due to Mr. Goldman withdrawing and not Ms. Goldman withholding access. Ms. Goldman had been trying for years to engage Mr. Goldman with their son and had asked for his help, but he rarely responded. At that time, Ms. Goldman had no confidence in Mr. Goldman's ability to act as a parent for J.G.

- [12] Justice Fisher also found that it was not until very close to the trial in 2010, that Mr. Goldman's main access to J.G. was exercised through weekly computer chats. Mr. Goldman acknowledged that he needed to be more involved in his son's life. In that regard, he began to take the necessary training to be able to properly care for J.G. He said he was willing to assist Ms. Goldman by caring for J.G. on weekends and being available for emergencies.
- [13] Justice Fisher ordered joint guardianship of J.G. finding it was in his best interests.
- [14] Notwithstanding Mr. Goldman's claimed desire to be more involved in his son's life, that did not happen. According to the Walkem Decision, Mr. Goldman has not seen J.G. since 2011. Ms. Goldman's evidence in the within trial was the same; Mr. Goldman has still not seen his son.

III. Imputation of income and orders

A. Fisher Decision

- [15] The primary issue before Justice Fisher with respect to support was Mr. Goldman's income. Ms. Goldman had obtained an interim order on February 12, 2020, that Mr. Goldman pay child support in the amount of \$996 per month and spousal support in the amount of \$2907 per month ("Interim Order"). This was based on a Guideline income of \$110,000.
- [16] Before this, Mr. Goldman made voluntary support payments to Ms. Goldman in varying amounts, starting with \$2,500 per month in November 2006. This was increased to \$2650 in January 2008. However, in November and December 2009, Mr. Goldman unilaterally reduced his payments to \$1000 and he paid \$2000 for the month of January 2010. Until September 2010, he made car payments for Ms. Goldman in the amount of \$461 per month.
- [17] Justice Fisher found that Mr. Goldman was a high-income earner driving large rig trucks seasonally in Alberta. Mr. Goldman earned \$121,529 in 2007, \$147,399 in 2008, and \$142,133 in 2009.
- [18] At trial commencing in October 2010, Mr. Goldman's evidence was that he was laid off in February 2010, due to an economic downturn. There was no seasonal contract work available. His Guideline income dropped significantly since the Interim Order. After his layoff, Mr. Goldman moved back to Parksville, where he started a small business doing renovations and in July he began working for a contracting company. Based on those two sources of income, combined with some Employment Insurance payments, Mr. Goldman estimated he earned approximately \$60,000 to \$63,000 in 2010, and he expected to earn \$65,000 in 2011. Mr. Goldman submitted that he was prepared to go back to Alberta if a job became available but that he had limited contacts and going back would mean he would not be able to see his son on a regular basis.

- [19] Justice Fisher determined that Ms. Goldman was entitled to both compensatory and non-compensatory spousal support based on the financial consequences to her as primary role she had in caring for J.G. Also, since separation, Ms. Goldman had been economically disadvantaged by the breakdown of the marriage and she required spousal support in order to continue to meet her responsibilities to J.G.
- [20] Justice Fisher also found that based on Mr. Goldman's income, he ought to have paid spousal support in the \$3,000 to \$4,000 range between 2007 and 2009. Rather he made total monthly payments of approximately \$3,000, including monthly car payments. Mr. Goldman reduced the last two months' support in 2009 to \$1000. Given Mr. Goldman's payments were voluntary, Justice Fisher could not delineate what portion was for child support and what portion was for spousal support.
- [21] Ultimately, Justice Fisher determined that Mr. Goldman was capable of earning an income from his current 2010 employment of \$75,000, which accounted for his potential to supplement his contract to a modest degree with his home business. For guideline purposes, Justice Fisher set his income at \$78,000.
- [22] Taking into account property division was entirely in Ms. Goldman's favour, as modest as it was; a home valued at \$65,000, Justice Fisher ordered Mr. Goldman to pay Ms. Goldman monthly spousal support in the amount of \$2000 effective January 1, 2011.
- [23] Among the Fisher Orders was the obligation of the parties to exchange financial information on June 1st of each year. Mr. Goldman was also ordered to provide copies of his income tax returns, notice of assessments and financial statements for his business annually. Any adjustments to the amount of child support based on a material change in either party's income are to be made as of July 1st of each year.

B. Justice Goepel 2011 Order

- [24] After the Fisher Decision, Mr. Goldman made no effort to be a part of J.G.'s life. Shortly after the trial, Mr. Goldman moved and did not advise Ms. Goldman or J.G. of his whereabouts or his employment status. Mr. Goldman also took no part in decision making for J.G. Ms. Goldman sought an order of sole guardianship for J.G. in December 2011. Mr. Goldman did not participate in that proceeding. Justice Goepel granted Ms. Goldman sole interim guardianship and also ordered Mr. Goldman to produce his 2010 notice of assessment, his work-related medical benefits information and to pay special expenses for a maximum of \$500 per month.

C. Master Keighley 2022 Order

- [25] Ms. Goldman sought financial disclosure. On December 12, 2022, Master Keighley ordered Mr. Goldman to provide his tax returns and notices of assessments from 2011 onward, and an affidavit setting out details of any businesses he had a beneficial interest in.

[26] Mr. Goldman disclosed his financial information in January 2023 showing his actual income from 2011 to 2021. It took Ms. Goldman some weeks to get over her shock and disbelief of what Mr. Goldman's income was before she served Mr. Goldman's then counsel with the March 2023 Application.

D. Justice Caldwell 2023 Order

[27] On May 31, 2023, Justice Caldwell ordered, among other things, subject to further order of the court, any existing or other support or costs orders are binding on the estate of Mr. Goldman in the event of his death.

E. Walkem Decision and Orders

Financial disclosure 2011 - 2021

[28] Though Mr. Goldman did not initially regularly pay these support payments, he did eventually begin to do so. He continued to pay Ms. Goldman \$2000 per month for spousal support and \$723 court ordered child support up to the trial before Justice Walkem. During the proceedings before Justice Walkem, the parties agreed that J.G. remained a child of the marriage due to his disabilities, and is unable to withdraw from the charge of his parents.

[29] Justice Walkem found that Ms. Goldman had been compliant by producing her financial information each year, seeking the same from Mr. Goldman. However, he only provided sporadic and incomplete financial information. Mr. Goldman provided copies of his tax return but not the notices of assessment or reassessment which listed his income as higher for a number of years between 2010 and 2014. Justice Walkem found that in some cases, the difference was quite significant. After that, Mr. Goldman provided no financial information at all. No upward adjustment of child support was ever made to reflect Mr. Goldman's higher income.

[30] Ms. Goldman had no knowledge of Mr. Goldman's life since 2011 as he had been entirely uninvolved with J.G. for roughly 12 years as of 2023.

[31] In or around 2018, Ms. Goldman did a Google search of Mr. Goldman and found that he and his wife, V.G., were living near Houston, B.C. and their names were associated with The Bearspaw Inn & Suites (The Bearspaw Inn). This knowledge of potentially unknown income led Ms. Goldman to initiate an application in 2020. Initially, she did not proceed with it given increased concerns for J.G.'s health and well-being during the onset of the COVID-19 pandemic.

[32] On July 12, 2022, Ms. Goldman filed a notice of intention to proceed and mailed it to Mr. Goldman at The Bearspaw Inn, and while he acknowledged Ms. Goldman mailed him something, he told her by email that he did not live there.

[33] In 2014 a mortgage registered to The Bearspaw Inn showed that V.G. and her sister were the borrowers and Mr. Goldman was a guarantor. Mr. Goldman and V.G. were listed as the registered owners and joint tenants of The Bearspaw Inn since November 16, 2014. After Ms. Goldman served Mr. Goldman with her notice of Intention to Proceed in July 2022, the joint ownership and tenancy were cancelled in September 2022, leaving only V.G. as the registered owner. Also, in November 2022, Mr. Goldman and V.G. entered into a marriage agreement which purports to transfer Mr. Goldman's financial interests to his wife.

[34] In January 2023, Mr. Goldman disclosed his actual income which was as follows:

2011

\$166,847

2012

\$144,638/ \$233.063

2013

\$245,448

2014

\$184,814

2015

\$102,787

2016

\$130,175

2017

\$104,839

2018

\$132,884

2019

\$76,920

2020

\$277,611

2021

\$233,054

[35] Based on Mr. Goldman's actual income, Justice Walkem varied his retroactive child support obligations commencing six months in 2011 onward.

[36] Justice Walkem found that Mr. Goldman's Guideline income for 2013 was \$144,638, however, his Line 150 total income was \$233,063, which income will be used for the purposes of determining spousal support.

IV. Issues

[37] The issues I must determine are:

- a. Should Ms. Goldman's spousal support be retroactively varied between 2011 and 2021 based on Mr. Goldman's actual income;
- b. Is Ms. Goldman entitled to retroactive spousal support from 2022 to present;
- c. Is Ms. Goldman entitled to ongoing spousal support;
- d. What, if any, special expenses should Mr. Goldman pay to Ms. Goldman; and
- e. Should spousal support be a debt on Mr. Goldman's estate after his death on a fixed period.

V. Mr. Goldman's post 2021 health issues

[38] Before moving to the issues, I want to address Mr. Goldman's claim that he is unable to be work due to ongoing medical issues.

[39] Mr. Goldman had a heart attack on July 14, 2021. He went on short term disability until December 17, 2021, when he was hired as a logistics supervisor for a major pipeline. He worked in that position until April 2023 when his position was eliminated.

[40] He was suffering from depression and anxiety. He went on medical leave in April 2023. However, the only medical information provided was a medical note dated April 12, 2023, indicating that Mr. Goldman needed one month off work related to his depression and anxiety. In an affidavit filed July 4, 2023, he said he had been referred to a registered clinical counsellor, and a psychiatrist. He met the counsel on July 4, 2023, and he was meeting with the psychiatrist on July 6, 2023.

[41] Justice Walkem found that Mr. Goldman had only appended medical records to an affidavit, without providing a sworn statement from a doctor. She determined that neither the heart attack or his other medical issues appeared to have impacted his annual income over time. She found Mr. Goldman to be intentionally unemployed.

[42] Mr. Goldman's submissions at the within hearing were similar to his before Justice Walkem, that since April 2023, he has been unable to work due to persistent medical issues.

[43] Mr. Goldman provided some medical information subsequent to the Walkem Decision. It shows that he had a chest x-ray and he was referred for an assessment in October 2023 to confirm whether he was suffering from chronic obstructive pulmonary disease ("COPD").

- [44] Mr. Goldman filed a medical report of Dr. John B. Armstrong dated October 2, 2024. Mr. Goldman requested Dr. Armstrong provide an independent medical legal evaluation (IME) about his ability to work.
- [45] Dr. Armstrong notes Mr. Goldman's past medical history. With respect to COPD, it was suggested Mr. Goldman might have COPD which was being treated with an inhaler. As of the date of the IME, Mr. Goldman had not had pulmonary studies so this remained an uncertain diagnosis. Dr. Armstrong urged Mr. Goldman to see a respirologist about whether he has COPD.
- [46] Dr. Armstrong also noted that Mr. Goldman had not seen his cardiologist for about a year. Before endorsing any return to work, Dr. Armstrong's opinion was that Mr. Goldman's cardiologist would likely wish to conduct certain tests respecting Mr. Goldman's heart health. Dr. Armstrong assumed Mr. Goldman's intention would be to return to a field supervisory position or accept an office job, adding that a labour job would not be medically appropriate.
- [47] Dr. Armstrong noted on the positive side that, despite Mr. Goldman's anxiety and depression, Mr. Goldman was at that time and in the longer term, likely to remain a consistently reliable and competitive worker. Dr. Armstrong's opinion was Mr. Goldman could work in a position he could manage physically, based on the findings of Mr. Goldman's cardiologist and respirologist coupled with Mr. Goldman's ability to lose weight and regain strength, flexibility and fitness.
- [48] Ms. Goldman says Mr. Goldman has not provided any reliable evidence upon which the court can make any determination as to his health. I agree with those submissions.
- [49] Mr. Goldman has taken no apparent steps to confirm his diagnosis of COPD after the referral was made on October 16, 2023. Nor has he provided any updated information related to his depression and anxiety and any steps he has taken to address them. Dr. Armstrong's opinion is that Mr. Goldman is able to work within his physical limits. Dr. Armstrong's opinion is that Mr. Goldman is employable. There is nothing in the medical information provided that shows Mr. Goldman is unable to work.
- [50] I find that Mr. Goldman is intentionally unemployed.

VI. Should Ms. Goldman's spousal support be retroactively varied

A. Applicable legal principles

- [51] The Fisher Order with respect to spousal support is a final order. The parties have been divorced for 14 years. I will set out the applicable legal principles respecting divorce before moving to the test to change, suspend or terminate a final spousal support order.
- [52] Section 15.2(6) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) sets out the objectives for spousal support:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time period.
- [53] Similarly, section 161 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] sets out similar spousal support objectives.
- [54] No one objective is paramount: *Moge v. Moge*, [1992] 3 S.C.R. 813 at p. 852.
- [55] In making a spousal support order, s. 15(2)(4) of the Divorce Act requires consideration of the condition, means, needs and other circumstances of each spouse, including:
- (a) the length of the time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- [56] Section 17(1)(a) of the Divorce Act also provide that the court may vary, rescind or suspend a spousal support order retroactively or prospectively.
- [57] There is a duty on parties in a family law dispute to disclose full and true information in a family law dispute: s. 5(1), FLA.
- [58] Section 17(4.1) of the Divorce Act provides that before the court makes a variation order in respect of spousal support order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order and, in making the variation order, the court shall take that change into consideration.
- [59] Section 167 of the FLA, provides,
- (1) On application, a court may change, suspend or terminate an order respecting spousal support, and may do so prospectively or retroactively;
 - (2) Before making an order under subsection (1), the court must be satisfied that at least one of the following exists, and take it into consideration:

- (a) a change in the condition, means, needs or other circumstances of either spouse has occurred since the order respecting spousal support was made;
- (b) evidence of a substantial nature that was not available during the previous hearing has become available;
- (c) evidence of a lack of financial disclosure by either spouse was discovered after the order was made.

i. Change in condition, means or needs

[60] With respect to change in condition, means or needs, Mr. Goldman's condition and means have changed significantly from his earnings in 2010. His income in 2011 was approximately \$100,000 more than he represented to the court in 2010 he anticipated earning that year. Since 2011, he has earned significant incomes with the exception of 2019 when his current wife was ill and he took time to care for her.

[61] C.G.'s evidence is that Mr. Goldman lives with his wife at The Bearspaw Inn. It is an over 6000 square foot, 9-bedroom, 6 bath commercial room rental establishment in Houston, B.C. Its value is well over \$600,000. In his financial statement. Mr. Goldman says he lives with his wife in her residence.

[62] Whereas, Ms. Goldman and their son persisted with the spousal and child support Mr. Goldman made to them in the amount of \$2273 per month, with some federal child benefits, and later J.G.'s PWD. The condition and needs of Ms. Goldman and J.G. has not changed in a positive way in the intervening period. Ms. Goldman's evidence is that she and her son have moved seven times since her divorce. She and J.G. now live in an old mobile home near Mission, B.C. valued at \$40,000. She did what renovations she could with what little money she had.

ii. Discovery of the failure to disclose financial information

[63] The is evidence that Ms. Goldman discovered that Mr. Goldman failed to properly disclose is financial information from 2011 to 2021 after the Fisher Orders were made.

B. Entitlement

[64] In 2010, Justice Fisher found Ms. Goldman was entitled to both compensatory and non-compensatory spousal support. I will have to decide whether that entitlement is ongoing since there is no mandatory entitlement to it. I will start with the legal basis for the establishment of spousal support.

- [65] There are three bases for entitlement to spousal support: compensatory, non-compensatory and contractual: Moge, at p. 861-863 (compensatory), Bracklow v. Bracklow, [1999] 1 S.C.R. 420 (non-compensatory), and Miglin v. Miglin, 2003 SCC 24 (contractual). See also Zacharias v. Zacharias, 2015 BCCA 376 at paras. 26 and 27. There was no contractual arrangement between Mr. Goldman and Ms. Goldman.
- [66] Compensatory support addresses the contributions of a spouse to the relationship and the spouse's losses upon its breakdown. This will include where one spouse was not employed outside the home in order to care for a child. The end of the relationship puts the spouse at an economic disadvantage which is addressed by this type of support: Moge, at page 861-863.
- [67] Non-compensatory support addresses the needs of the spouse after the breakdown in marriage. The court is to balance relevant factors with a view of achieving justice in the circumstances of the specific case: Bracklow, at para. 32.
- [68] Since the Fisher Decision, nothing has changed for Ms. Goldman insofar as she remains the sole and only caregiver of J.G. Not only has Ms. Goldman been unable to work due to her responsibilities caring for J.G., but she has not been able to retrain. Because she has not been able to work, she has not been able to earn a pension. She has never had medical benefits. Ms. Goldman continues to be at an economic disadvantage when compared to Mr. Goldman. Ms. Goldman has also established her ongoing entitlement to non-compensatory, or "needs based" spousal support: Bracklow, at para. 48.
- [69] I am satisfied that Ms. Goldman continues to be entitled to both compensatory and non-compensatory spousal support.

C. Factors to consider in retroactive awards

- [70] In the leading case of D.B.S. v. S.R.G., 2006 SCC 37, the Supreme Court of Canada held that parents have an obligation to support their children in a way that is commensurate to their income (para. 54). D.B.S. sets out the following factors to consider when determining whether to retroactive child support should be awarded:
- (a) Any reasonable excuse as to why the application was not made sooner;
 - (b) The conduct of the payor parent;
 - (c) The circumstances of the child; and
 - (d) Any hardship occasioned by the award.

- [71] These same factors have been held to applicable as well in determining whether a retroactive award of spousal support should be made: *Kerr v. Baranow*, 2011 SCC 10, at paras. 207-208, though there are different legal foundations for either award. For child support, the support is mandatory, where there is no presumptive entitlement to spousal support.
- i. Why the application was not made sooner
- [72] According to Ms. Goldman, after the Fisher Decision, Mr. Goldman did not pay his child or spousal support regularly. In approximately March 2011, when Mr. Goldman was two months into arrears, Ms. Goldman enrolled in the Family Maintenance Enforcement Program (now known as the British Columbia Maintenance Agency).
- [73] Ms. Goldman regularly sought Mr. Goldman's financial information, typically to no avail. If Mr. Goldman did respond, Ms. Goldman's requests were met with insults and accusations and Mr. Goldman's claim that he had no money. Ms. Goldman sent Mr. Goldman a copy of the Goepel Order. On January 18, 2012, Mr. Goldman sent her a lengthy email containing insults, abusive language and profanities.
- [74] Mr. Goldman says that Ms. Goldman delayed her application for variation of spousal support. Mr. Goldman advised her in 2013 that his income in 2011 was \$101,098, but she took no steps until recently to address that increased income. Ms. Goldman says she received a one page photocopy of Mr. Goldman's 2011 Notice of Assessment by email. Nothing more. She also says she did not know where he was, what he was doing and how to reach him beyond the email address she had.
- [75] In 2014, Mr. Goldman sent her his purported 2013 Notice of Assessment. In 2018, she received his 2014 Notice of Assessment. In January 2014, Ms. Goldman asked Mr. Goldman for his phone number, which he refused to provide to her.
- [76] In 2018, having no contact with him other than sporadic emails, Ms. Goldman conducted an online search of Mr. Goldman. She located him connected to The Bearspaw Inn, where she mailed her yearly financial information. Mr. Goldman responded by email advising her that he did not live at that location and that the Inn had nothing to do with him.
- [77] On two occasions in November 2019, Ms. Goldman emailed Mr. Goldman asking for his 2016, 2017 and 2019 financial information. Mr. Goldman did not respond.
- [78] In February 2020, by email Ms. Goldman requested Mr. Goldman's phone number, his address, his place of employment, information about medical coverage and his tax information from 2016 to 2019, inclusive. In April 2020, when Mr. Goldman responded, he told Ms. Goldman he could not help her financially and was otherwise dismissive of her and her requests.

- [79] In July 2022, Ms. Goldman sent her 2021 financial information to Mr. Goldman. She requested that he provide her with his income tax returns from 2010 to present, his Notices of Assessments since 2015 and all business-related statements from 2010. Mr. Goldman did not respond.
- [80] On July 12, 2022, Ms. Goldman filed and served a Notice of Intention to proceed on Mr. Goldman on a previous application. Ms. Goldman sought the enforcement of Mr. Goldman's legal obligation to provide his financial information for 2011 to 2021.
- [81] Due to Ms. Goldman having no contact information for Mr. Goldman other than his email address, she sought and was granted an order permitting service on him by email. On December 12, 2022, Ms. Goldman obtained the order for disclosure of Mr. Goldman's financial information, which he disclosed in January 2023.
- [82] On March 29, 2023, Ms. Goldman served Mr. Goldman's then counsel with another Notice of Application to specifically address his actual 2011 to 2021 income.

ii. Conduct of payor parent

- [83] As noted above, Mr. Goldman failed to comply with his legal obligation to provide his financial statement each year. Not only did he fail to do so, what he did provide was sporadic, years' old and not accurate information. He dismissed Ms. Goldman when she sought his financial disclosure. He had no contact with his son. He provided no respite to Ms. Goldman notwithstanding his representation to Justice Fisher about his desire and intention to do so.

iii. Circumstances of the child

- [84] J.G. is now an adult. He continues to suffer from various medical issues related to Treacher Collins Syndrome. He suffers from anxiety. He had to be home schooled. He does not speak. Ms. Goldman encourages him to do even the smallest tasks himself, such as pay for an item in a store. He has never crossed the street alone.

iv. Hardship occasioned by the award

- [85] I have determined Mr. Goldman is intentionally unemployed. Any hardship that may be occasioned by the payment of a variation on retroactive spousal support is outweighed by Mr. Goldman's flagrant disregard to his support obligations in light of significant earnings he did not disclose while under a legal obligation to do so. He only disclosed that information after a further court order. He has diverted assets. It is egregious.

D. Spousal Support Guidelines

- [86] The Spousal Support Advisory Guidelines [SSAG] set a range of low, medium and high amounts that take into account child support and net disposable income of each party. While the SSAG are informal rules and not legally binding: *Chutter v. Chutter*, 2008 BCCA 507, at para. 100, the Court of Appeal in *Sebok v. Babits*, 2022 BCCA 2 at para. 24 confirmed

reference to them is "required as part of the process for quantifying support", and exceptional circumstances are required to justify a substantial departure from them. Where there is a departure, reasons should be given: Sebok: paras. 25-26.

- [87] As noted above, the SSAG generally adopt the determination of income provided for in the Federal Child Support Guidelines, SOR/97-175 [FCSG]. Section 16 of the FCSG provides subject to sections 17 to 20, a spouse's annual income is determined using their total line 150 income in their T1 general, adjusted in accordance with Schedule III.
- [88] Sections 17-20 of the FCSG address various situations in which the FCSG contemplate that it is appropriate to depart from the presumptive reference to the relevant party's line 150 income. Where a spouse's pattern of income fluctuates, section 17 of the FCSG provides that the court may take the spouse's last three years' income to determine an amount that is fair and reasonable in light of the pattern of income.
- [89] Section 19 deals with imputing income where the court considers it appropriate in the circumstances including the following:
- (a) the spouse 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;
 - (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
 - (f) the spouse has failed to provide income information when under a legal obligation to do so.
- [90] Justice Fisher was of the view that Mr. Goldman ought to pay the spousal support at the high end. She also considered the disability of J.G.
- [91] Where a child with special needs is involved, s. 12.10 of the SSAG provide:

A child with special needs can raise issues of both amount and duration in spousal support law, issues that may require an exception.

First, duration. A child with special needs can obviously affect the ability of the primary parent to obtain employment, whether part-time or full-time. This may require that the duration of support be extended beyond the length of the marriage or beyond the last child finishing high school, the two possible maximum time limits under the with child support formula.

Second, amount. Again, a special needs child will often mean that the primary parent cannot work as much, perhaps not even part-time, and thus the amount of spousal support will be increased because of the recipient's lower income, an adjustment that can be accommodated by the with child support formula. But even then, there may be a need to go above the upper end of the range, to leave an even larger percentage of the family's net disposable income in the hands of the primary parent, above the typical maxima of 54 per cent (1 child) or 58 per cent (2

children) or even 61 per cent (3 children). In these cases, spousal support awards go beyond the usual compensatory rationale under the with child support formula, to reflect a larger component of supplementing the children's household standard of living. The table amount of child support and section 7 expenses for the special needs child may not fully reflect all the costs imposed upon the recipient spouse's household by that child.

[92] Nothing has changed for Ms. Goldman and her son since the Fisher Decision. She continues to be the sole caregiver. She has not been able to work or train.

[93] I am satisfied that Ms. Goldman is entitled to a variation of her spousal support for 2011 and 2021 based on the recent financial disclosure of Mr. Goldman.

[94] I am also satisfied that Ms. Goldman is entitled to spousal support from 2022 to present based on Mr. Goldman's actual and imputed income.

E. Quantum and Duration

[95] Justice Walkem averaged Mr. Goldman's earnings from 2017 to 2021, and imputed his income at \$165,063.60 for the purposes of child support commencing in 2022 in the circumstances before her.

[96] Mr. Goldman's actual income in 2022 was approximately twice the amount imputed by Justice Walkem. I am bound by Justice Walkem's findings as to child support.

[97] Where a payor's income is over \$350,000, the court may exercise its discretion when determining an appropriate spousal support amount, after taking into account the actual amount of child support. Mr. Goldman's 2022 income was \$359,258. A downward adjustment of this one-time, one-year period is not appropriate even though it results in higher spousal support for that year.

[98] The most fair and reasonable approach to address this is to also reduce Ms. Goldman's spousal support taking into account her delay in advancing her claim for that support.

[99] For the purposes of imputing income for retroactive spousal support for 2023 and 2024, while s. 17 of the FCSSG provide that the court may average a spouse's income over the three years, doing so here would greatly inflate Mr. Goldman's income given his high earnings in 2022. There are no employment deductions to make in accordance with Schedule III.

[100] Averaging income for support purposes is highly fact-specific and I have broad discretion under s. 19 to do so. Under that discretion, I may consider a five-year average if appropriate: *Harras v. Lhatka*, 2016 BCCA 246.

[101] I find the fairest approach would be to average Mr. Goldman's earnings over five years, from 2018 to 2022. That figure will be the basis for prospective spousal support from January 1, 2025.

[102] For the most part, Mr. Goldman paid his \$2000 per month spousal support, though he stopped making those payments in approximately January 2024. Because he is still bound by the Fisher Order, those monthly spousal supports payments are factored in the below table. Mr. Goldman has been ordered to pay retroactive and prospective child support, which amounts have also been included in the spousal support owed calculations.

Year

Actual Income

S/S owed mth x 12 mths

S/S credited \$2000/mth x 12 mths

S/S/ owing

2012

\$235,661

\$6830 x 12

\$81960

\$24000

\$57960

2013

\$245,448

\$7126 x 12

\$85512

\$24000

\$61512

2014

\$184,814

\$5287 x 12

\$63444

\$24000

\$39444

2015

\$102,787

\$2590 x 12

\$31080

\$24000

\$7080

2016

\$130,175

\$3407 x 12

\$40884

\$24000

\$16884

2017

\$104,839

\$2557 x 12

\$30684

\$24000

\$6684

2018

\$132,884

\$3467 x 12

\$41604

\$24000

\$17604

2019

\$76,920

\$2162 x 12

\$25944

\$24000

\$1944

2020

\$277,611

\$8188 x 12

\$98256

\$24000

\$74256

2021

\$233,064

\$6928 x 12

\$83136

\$24000

\$59136

2022

\$359,258

\$10524 / 12

\$126288

\$24000

\$102288

2023

\$215,947

\$6,445 / 12

\$77340

\$24000

\$53340

Total

\$498132

- [103] On a simple calculation the amount of spousal support Mr. Goldman ought to have paid, with his actual child support payments factored in, is \$498,132.
- [104] When determining appropriate spousal support, consideration should be made to ensure that the payor is not left with an untenable quality of life position.
- [105] In 2010, Justice Fisher determined the Ms. Goldman receive apportionment of 100% of the family home, while modest at \$65,000, was a benefit to Ms. Goldman. It is fair and reasonable to exclude 2011 from the calculations for spousal support on that basis.
- [106] I accept that Ms. Goldman had notice in 2013 of Mr. Goldman's increased 2011 income, but she took no steps to advance a variation claim. I appreciate that she says she did not know where Mr. Goldman was; she only had an email address, but she took no apparent steps to try to locate Mr. Goldman.
- [107] There is no question she has faced and continues to meet an incredibly difficult challenge as the sole caregiver to her and Mr. Goldman's son. Ms. Goldman has looked after every single aspect of J.G.'s life needs, including his medical treatments, educational needs and his home care, alone, by herself. Given her meagre earnings on the support she and J.G. did get from Mr. Goldman, she would not have had the means to retain counsel to assist her. That said, she gave no evidence of any attempts she made in trying to locate Mr. Goldman once she was on notice of his higher 2011 income other than what has already been referred to.
- [108] Mr. Goldman's conduct is deeply blameworthy. He failed to provide his true financial information each and every year when he was legally obligated to do so: *D.B.S and Michel v. Graydon*, 2020 SCC 24 at paras. 48, 50. He did not do so until a further court order was made against him in 2022. Failure to disclose material information, particularly income and financial information, has been described as "the cancer of family law litigation": *Michel*, at para. 33; *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.) at para. 9.
- [109] He did not provide Ms. Goldman with contact information beyond the email address she had even after her many requests of him to do so. He came to loathe Ms. Goldman for asking for money from him. He has made no effort to engage with his son, to check in on him, knowing how severely disabled he was. He offered no respite support to Ms. Goldman whatsoever.
- [110] Notwithstanding Mr. Goldman's blameworthy conduct, which is exceptionally egregious, I must balance what would be a significant award to almost anyone. I am unable to accept Mr. Goldman's claim of having no assets. In fact, he diverted his most significant assets. He is capable of working. I do not find there will be a hardship on him if a retroactive award is made in favour of Ms. Goldman, though I find it should not be in the amount of \$498,132. It will also not be a hardship on him to continue to pay spousal support. He is still of working age and has the proven potential of being a high wage earner.

- [111] Taking into account Ms. Goldman's delay in bringing her variation claim, the fairest and most reasonable commencement date for a retroactive spousal support is January 1, 2014, which is the following year she was advised of Mr. Goldman's increased income.
- [112] Therefore, Ms. Goldman will have retroactive spousal support for the period January 1, 2014 to December 31, 2024 in the amount of \$378,660.

VII. Is Ms. Goldman entitled to ongoing spousal support

- [113] As stated in these reasons, the situation for Ms. Goldman and J.G. has remained constant. J.G. is entirely dependent on Ms. Goldman for his care. Ms. Goldman is entirely dependent on spousal support in order to care for J.G. As long as he is alive and being cared for by Ms. Goldman, she will be unable to work or take any training an effort to become self-sufficient.
- [114] I am satisfied in all the circumstances that she continues to be entitled to compensatory and non-compensatory spousal support for as long as she must devote herself to the care of J.G.
- [115] Ms. Goldman is entitled to monthly spousal support payments in the amount of \$6445 commencing January 1, 2025.

VIII. Extraordinary Expenses

- [116] Justice Fisher set the maximum amount of extraordinary expenses at \$356 per month with Mr. Goldman's portion being 70% for medical emergency respite for Ms. Goldman she may require. If Ms. Goldman incurred those expenses, she was to provide them to Mr. Goldman for payment. In 2012, Justice Goepel increased the amount Mr. Goldman was to pay per month to \$500 per month.
- [117] In her 7th affidavit, dated May 25, 2023, Ms. Goldman listed the various expenses she had incurred and paid herself over 13 years. Justice Walkem determined that Mr. Goldman had not paid any special expenses. However, because Ms. Goldman had not provided receipts she was unable to order payment of those expenses. Ms. Goldman was at liberty to bring forward those receipts.
- [118] In affidavits filed by Ms. Goldman subsequent to the Walkem Decision, no special expense receipts have been provided by Ms. Goldman to Mr. Goldman for him to pay. Therefore, retroactive extraordinary expenses are not addressed within the spousal support calculations in these reasons.
- [119] Prospectively, on a proportionate share, and based on my findings of Mr. Goldman's imputed income for 2023, his share of extraordinary expenses will be 75.9%, and Ms. Goldman's share will be 24.1%.

IX. Should spousal support be a debt on Mr. Goldman's estate

[120] Ms. Goldman also seeks an order that Mr. Goldman's duty to pay spousal support to her continues after his death and is a debt of Mr. Goldman's estate for a period fixed by the court.

[121] Section 170(g) of the FLA provides that subject to s. 171(1), that a duty to pay child support or spousal support continues after the death of the person having the duty, and is a debt of his or her estate for the period fixed by the court.

[122] Before any order is made, the court must consider the following factors:

- (a) that the person receiving child support or spousal support has a significant need for the support that is likely to continue past the death of the person paying child support or spousal support;
- (b) that the estate of the person paying the child support and spousal support is sufficient to meet the need referred to in paragraph (a) after taking into account all claims on the estate, including those of creditors and beneficiaries; and
- (c) that no other practical means exist to meet the needs referred to in paragraph (a).

[123] This is a high threshold where certain inquiries are required to satisfy paragraph (b) including the respective party's life expectancies or the potential claims against Mr. Goldman's estate. The case law suggests that information about whether the recipient would likely have a significant need for spousal support is required. I find Ms. Goldman does satisfy this requirement. Other factors may include whether the recipient could obtain meaningful employment. I accept that for as long as J.G. is alive, Ms. Goldman will not be able to be meaningfully employed. I am also satisfied that there are no other practical means that exists to meet the significant need for spousal support after Mr. Goldman's death: *Joffres v. Joffres*, 2014 BCSC 1778.

[124] Mr. Goldman led no evidence as to any claims on his estate.

[125] As noted, Justice Caldwell ordered that any existing or other support or costs orders are binding on the estate of Mr. Goldman on his death. While some courts have determined the fixed period to be on the age of a child turning a certain age, for instance: *Kumagai v. Campbell Estate*, 2016 BCSC 1161, that approach would not be appropriate in the circumstances of this case. It would be appropriate that Ms. Goldman's spousal support be indefinite.

X. Fraudulent Conveyance Claim

[126] Like Justice Walkem, the fraudulent conveyance claim was not properly pled before me, and Ms. Goldman still had some documents to file. Therefore, Ms. Goldman's fraudulent conveyance claim, inter alia, in paragraph 5 of her claim, seeking an additional \$60,000 be imputed to Mr. Goldman's income from 2014, is not addressed in these reasons.

XI. Credibility of Mr. Goldman

[127] Mr. Goldman's conduct toward Ms. Goldman and his obligations to his son J.G. have been utterly dismissive. He rebuffs his legal responsibilities, court ordered or otherwise.

[128] Mr. Goldman purports to have no assets. He appears to have transferred all of his assets to his wife by way of a marriage agreement after being served with Ms. Goldman's Notice of Intention to proceed in 2022. In his financial statement made on June 28, 2023, among his assets, he claims \$80,000 unsecured loan to his wife, V.G. It is not clear why he lists that as an asset. He claims no housing costs because he lives with his wife at The Bearspaw Inn. He also listed vacations in 2020 of \$7,000, in 2022 of \$10,000 and in 2023 of \$15,000. He claims a few hundred dollars in two bank accounts yet, his expenses significantly exceed his claimed medical employment income in 2023 of \$580 per week. Mr. Goldman's assets and expenses do not appear accurate or reliable.

[129] In the marriage agreement, Mr. Goldman's wife holds, among other assets The Bearspaw Inn with a listed value of \$549,000, and household contents at a value of \$1,227,750. Mr. Goldman lists no assets, just debt as a co-borrower in the amount of \$23,552.24.

[130] When Mr. Goldman faced court proceedings, in 2010 and 2023, his income fell significantly. Prior to 2022, he provided financial information to Ms. Goldman that was not true. He did not produce his financial information until he was required to do so by a further court order.

[131] I do not find Mr. Goldman to be credible or reliable.

XII. Conclusion

[132] In conclusion, I order:

- (a) Mr. Goldman shall pay Ms. Goldman \$6,445 per month in spousal support indefinitely, commencing January 1, 2025 and for every month thereafter until agreement of the parties, or further court order.
- (b) Mr. Goldman shall pay Ms. Goldman \$378,660 in retroactive support dating back to January 1, 2014 to December 31, 2024, plus interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79.
- (c) Justice Caldwell's order made May 31, 2023 remains valid such that any existing or other support or costs orders are binding on the estate of Mr. Goldman in the event of his death.

- (d) Ms. Goldman's claim for retroactive extraordinary expenses are adjourned generally.
- (e) Commencing January 1, 2025, Mr. Goldman shall pay 75.9% of extraordinary expenses, payable to Ms. Goldman within 30 days of Ms. Goldman providing proof of the expense incurred.
- (f) Costs of the application on spousal support payable forthwith.

"The Honourable Justice Dion"

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