

CANADA / JUDGMENT

Gonzalez Fricke v. Del Valle Rosado

2023 BCSC 1510

COURT

Supreme Court of British Columbia

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2023 BCSC 1510 Gonzalez Fricke v. Del Valle Rosado

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gonzalez Fricke v. Del Valle Rosado,

2023 BCSC 1510

Date: 20230829

Docket: E61263

Registry: New Westminster

Between:

Jannette Gonzalez Fricke

Claimant

And

Miguel Angel Del Valle Rosado

Respondent

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Claimant:

Victoria L.L. Harker

Counsel for the Respondent:

E. Anne Berrie

Place and Dates of Trial:

New Westminster, B.C.

January 30, 31, 2023

February 1-3, 2023

May 19, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 29, 2023

Table of Contents

Introduction. 3

Uncontested orders. 4

Issues. 5

Credibility and Reliability. 6

Analysis. 8

a) What is the net outcome when family assets and debts are divided equally?. 8

i) What is the net value of Mr. Del Valle Rosado's house in Mexico?. 9

ii) What are the other bank balances and investment accounts to be divided as family assets?. 12

iii) Did Mr. Del Valle Rosado prove the trucking business loan?. 15

iv) What are the family debts to be divided?. 17

v) What is the net result of dividing family assets and debt equally?. 19

b) Should income be imputed to Mr. Del Valle Rosado pursuant to the Guidelines for child support purposes?. 20

Mr. Del Valle Rosado's employment history. 21

Basis for imputing income. 25

c) Is Ms. Gonzalez Fricke entitled to spousal support?. 26

Ms. Gonzalez Fricke's employment history and role in the marriage. 28

Compensatory grounds. 32

Non-compensatory grounds. 33

- d) What spousal support is Ms. Gonzalez Fricke entitled to receive?. 34
- d) Is retroactive support payable after accounting for interim support payments made by Mr. Del Valle Rosado?. 38

Order. 39

Introduction

- [1] Jannette Gonzalez Fricke lived in Mexico and Miguel Angel Del Valle Rosado lived in Canada when they started dating in April 2009. Ms. Gonzalez Fricke had two children from previous relationships. Mr. Del Valle Rosado started financially supporting Ms. Gonzalez Fricke in October 2010, and they married on December 29, 2010 in Mexico. On July 31, 2012, Ms. Gonzalez Fricke and her two children arrived in Canada under Mr. Del Valle Rosado's sponsorship. The parties separated on June 15, 2020.
- [2] In her notice of family claim, Ms. Gonzalez Fricke seeks a divorce, child support for her younger child (A), spousal support, and an equal division of family assets and debts. She specifically claims an interest in a house in Mexico owned by Mr. Del Valle Rosado.
- [3] Mr. Del Valle Rosado paid some interim without-prejudice child and spousal support to Ms. Gonzalez Fricke after separation, but she says that he has underpaid based on earnings she says should be imputed to him. Ms. Gonzalez Fricke says that income should be imputed to Mr. Del Valle Rosado because
 - a) he was under-employed when he took approximately two months off work after the parties separated;
 - b) he was under-employed from July 11, 2021 to March 21, 2022 when he took an unpaid leave of absence to look after his terminally ill mother in Mexico; and
 - c) he failed to disclose complete bank account records for the trucking business that he ran.
- [4] At the outset of trial, Mr. Del Valle Rosado conceded that child support was payable for A; however, he says that his income for purposes of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] should be his line 15000 income.
- [5] Mr. Del Valle Rosado denies that Ms. Gonzalez Fricke is entitled to spousal support, saying in part that her economic status post-separation in Canada is better than her pre-marriage economic status as a single parent of two young children living in Mexico and that she is currently under-employed. Mr. Del Valle Rosado agrees that family assets and debts should be divided equally, but he disagrees with Ms. Gonzalez Fricke's accounting of family assets and debts. In particular, Mr. Del Valle Rosado seeks to divide equally liability for a business loan related to a failed trucking business that he says is a family debt.

- [6] In closing argument, Mr. Del Valle Rosado submitted that he is entitled to an undivided half-interest in Ms. Gonzalez Fricke's half share of a house she inherited when her father died in April 2019. I disagree. Mr. Del Valle Rosado failed to file a counterclaim claiming an interest in real property. In any event, Ms. Gonzalez Fricke's interest in her father's house (which remains unregistered as the will has not been probated) is an inheritance that is excluded from family property and not subject to division: Family Law Act, S.B.C. 2011, c. 25, s. 85(1)(b).
- [7] I will review the uncontested orders and facts before turning to the issues to be decided.

Uncontested orders

- [8] All of the statutory requirements for a divorce have been met, and both parties consent to the order for divorce. The parties shall be divorced, effective the thirty-first day after the date of this judgment.
- [9] Mr. Del Valle Rosado shall pay monthly child support based on his Guidelines income for A for so long as A remains a child of the marriage. The amount of his Guidelines income since separation and whether any retroactive child support is payable remains in dispute and will be addressed by these reasons for judgment.
- [10] Mr. Del Valle Rosado consents to an order that he maintain extended health benefits coverage through his employer for A, for as long as A remains eligible.
- [11] In terms of dividing family assets and debts, the parties agree that
- a) the Nissan vehicle shall remain with Ms. Gonzalez Fricke (value \$10,000);
 - b) the balance in Ms. Gonzalez Fricke's personal bank accounts as of June 15, 2020 shall be divided equally (account 6252 balance \$264.76; account 5787 balance \$3904.59);
 - c) the negative balance in Mr. Del Valle Rosado's Vancity Credit Union ("Vancity") account as of the date of separation is a family debt that shall be divided equally (\$4457.64); and
 - d) Ms. Gonzalez Fricke's Vancity Visa balance owing at separation is a family debt that shall be divided equally (\$1051.65).

Issues

- [12] The issues to be decided are as follows:
- a) What is the net outcome when family assets and debts are divided equally?
 - i. what is the net value of Mr. Del Valle Rosado's house in Mexico?
 - ii. what are the other bank balances and investment accounts to be divided as family assets?
 - iii. Did Mr. Del Valle Rosado prove the trucking business loan?

- iv. what are the family debts to be divided?
 - v. What is the net result of dividing family assets and debts equally?
 - b) Should income be imputed to Mr. Del Valle Rosado pursuant to the Guidelines for the purposes of calculating child support?
 - c) Is Ms. Gonzalez Fricke entitled to spousal support?
 - d) If so, what spousal support is Ms. Gonzalez Fricke entitled to receive? and
 - e) Is retroactive support payable after accounting for interim support payments made by Mr. Del Valle Rosado?
- [13] Before turning to these issues, I will comment briefly on the parties' credibility and reliability. Throughout these reasons, all amounts are in Canadian dollars unless indicated to be in U.S. dollars ("USD") or Mexican pesos ("MXN").

Credibility and Reliability

- [14] Ms. Gonzalez Fricke and Mr. Del Valle Rosado were the only witnesses at trial. There were few direct conflicts between their testimony other than their different perspectives on whether Mr. Del Valle Rosado encouraged Ms. Gonzalez Fricke to find a job when they were together, whether he told her about family debt before the parties separated, and whether Ms. Gonzalez Fricke knew she would be named as a director and shareholder of the trucking company, Fast Valle Logistics ("Fast Valle"), before arriving at the lawyer's office to sign papers.
- [15] Mr. Del Valle Rosado's credibility was adversely affected by his failure to provide full financial disclosure.
- [16] Mr. Del Valle Rosado disclosed a consumer proposal made March 3, 2021 that set out the amount he proposed to pay to unsecured creditors, but he failed to disclose the proof of debts form that identified the unsecured creditors and the amounts they were owed. Mr. Del Valle Rosado failed to disclose any documents to prove the amount of credit card or line of credit debt at the date of separation or how and when it accumulated. Instead, Mr. Del Valle Rosado asked the Court to infer that amounts were owed to credit card companies and on a line of credit and that such amounts were incurred prior to separation.
- [17] Mr. Del Valle Rosado's failure to disclose other financial documents makes it difficult to sort out the parties' financial situation as of the date of separation and the date of trial. For example, Mr. Del Valle Rosado disclosed statements for two of three Wells Fargo bank accounts used in connection with Fast Valle, but he failed to disclose a complete set of statements for a third account. The third account was a joint chequing account in the names of both parties that was used to deposit trucking revenue and to pay a truck lease. Mr. Del Valle Rosado acknowledged that he controlled the Wells Fargo accounts, and he had online access at least until the accounts were closed in July 2021. He produced 18 months worth of

statements for the other two accounts but not for the joint account used for the key trucking business transactions, which he failed to explain.

- [18] Mr. Del Valle Rosado provided only limited documentation related to the house he owns in Mexico. No recent assessment of the value of the house was provided to the Court. The most recent tax assessment filed at trial was from 2020. Mr. Del Valle Rosado failed to provide an updated mortgage statement despite a specific request by Ms. Gonzalez Fricke's counsel that he do so and despite spending eight months in Mexico in 2021-2022. The lack of documents makes it difficult to determine the equity in the house in Mexico. When giving evidence in direct examination, Mr. Del Valle Rosado claimed that he only made regular mortgage payments, but bank account statements confirm that he made lump sum payments toward the mortgage after separation. It is likely that Mr. Del Valle Rosado did not disclose that he owned a house in Mexico when he made his consumer proposal, but his failure to disclose his application for consumer proposal does not allow certainty on this point.
- [19] Mr. Del Valle Rosado failed to disclose RRSP statements as of the date of separation or trial. Mr. Del Valle Rosado provided two RRSP statements from 2021, which do not assist in determining the values of RRSP investments as of the date of separation or the date of trial. His bank account statements and 2020 income tax return show that he cashed in RRSPs after separation in late 2020 and early 2021, but he failed to disclose that he had disposed of these assets in his April 22, 2021 F8 financial statement.
- [20] Mr. Del Valle Rosado's failure to disclose documents in accordance with the Supreme Court Family Rules and his selective document disclosure undermines his credibility: *YouYi Group Holdings (Canada) Ltd v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at para. 92e).
- [21] On the other hand, I found Ms. Gonzalez Fricke to be a generally credible witness. That said, her evidence about finances is less reliable than the balance of her testimony. Ms. Gonzalez Fricke acknowledged that she was not involved in the family finances prior to separation. I accept her statement that she is "very very bad with numbers".
- [22] When her F8 financial statement filed April 9, 2021 was put to her in cross-examination, Ms. Gonzalez Fricke acknowledged that she received various government benefits between January 1, 2021 and April 9, 2021 that were not reflected in her F8 financial statement. As a result, her actual 2021 income for spousal support purposes was approximately \$10,000 more than the \$5708 projected on her April 9, 2021 F8 financial statement. While this inaccuracy is not insignificant, unlike Mr. Del Valle Rosado, Ms. Gonzalez Fricke disclosed all of her bank and credit card statements, which supports her assertion when cross-examined on her April 9, 2021 F8 financial statement that she had nothing to hide. In her F8 financial statement sworn December 12, 2022, she under-reported the amount of child tax benefit she received annually by \$1500, but I accept that Ms. Gonzalez Fricke knew how much she received monthly and did not recognize that the actual annual amount exceeded the amount recorded on her F8 financial statement.

Analysis

a) What is the net outcome when family assets and debts are divided equally?

[23] The parties agree that family assets and debts should be divided equally, but they disagree on the value of family assets and debts and what credit (if any) Mr. Del Valle Rosado should receive for post-separation debt payments. Mr. Del Valle Rosado's failure to provide full disclosure of documents interferes with the Court's ability to determine the value of family assets and debts. Where the court finds it difficult to determine the value of the parties' assets and debts due to one party's inadequate financial disclosure, the non-disclosing party must bear the consequences of any errors that result and cannot be heard to complain.

[24] Section 81 of the Family Law Act provides that, on separation, spouses are entitled to an undivided half interest in all family property and are equally responsible for family debt, "regardless of their respective use or contribution", except as otherwise provided in Part 5.

[25] Section 84 of the Family Law Act defines family property.

[26] Section 86 of the Family Law Act provides that family debt includes all financial obligations incurred by a spouse during the relationship up to the date of separation and after separation if incurred for the purpose of maintaining family property.

[27] Section 87 of the Family Law Act provides that the value of family property must be based on its fair market value as of the date of the hearing, unless otherwise ordered, where there is no agreement dividing family property and debt. Family assets and debt are identified as of the date of separation and valued as of the date of trial.

i) What is the net value of Mr. Del Valle Rosado's house in Mexico?

[28] The family's most significant family asset is a house in Mexico registered in Mr. Del Valle Rosado's name. There was little evidence upon which to find the current value of the house or the amount owing (if any) on the mortgage in respect of the house. I find that the net value of the house in Mexico is \$28,000 CDN based on Mr. Del Valle Rosado's evidence that the house is currently worth at least 400,000 MXN. I am not satisfied that Mr. Del Valle Rosado has proven that there is mortgage debt owing on the house in Mexico.

[29] In January 2012, Mr. Del Valle Rosado applied and qualified for a Mexican government loan to buy a house in Mexico. In his F8 financial statement sworn April 22, 2021, Mr. Del Valle Rosado deposed that he purchased the house for 545,180 MXN. The exchange rate on December 15, 2011 was 13.5 MXN per \$1 CDN according to a fund transfer sent from Mr. Del Valle Rosado to Ms. Gonzalez Fricke on that date. I find that the purchase price of the house was approximately \$40,380 CDN.

- [30] There was little evidence at trial regarding the current value of the house in Mexico. Mr. Del Valle Rosado confirmed in cross-examination that the house in Mexico is valued at more than 400,000 MXN. A municipal tax assessment from November 23, 2020 valued the house for tax purposes at 335,417 MXN as of that date; however, there was no evidence about how the tax-assessed value corresponds to market value in Mexico. There was no updated tax assessment or appraisal in evidence.
- [31] The evidence regarding the amount owing with respect to the house is also unsatisfactory. In 2012, the Mexican government loaned Mr. Del Valle Rosado the entire purchase price of the house. In October 2017, Mr. Del Valle Rosado secured a bank mortgage in the amount of 487,553 MXN and paid out the government loan. According to the mortgage statement dated October 13, 2017, the amount owing on the mortgage would have been 447,533 MXN as of November 2020 (i.e., less than the tax-assessed value) and 383,336 MXN as of February 2023 if only regular mortgage payments had been made. However, Mr. Del Valle Rosado failed to provide an updated mortgage statement to establish the actual amount owing on the mortgage, either as of the date of separation or date of trial.
- [32] Mr. Del Valle Rosado testified in direct that there is approximately \$28,000 CDN owing on the mortgage. However, in his F8 financial statement dated April 22, 2021 he deposed that there was \$26,711 CDN owing on the mortgage, and he acknowledged in cross-examination that the amount owing on the mortgage has gone down since then.
- [33] There is little evidence regarding mortgage payments. According to Mr. Del Valle Rosado, he has paid approximately \$420 CDN monthly toward the mortgage since April 22, 2021. However, the source of these mortgage payments remains unclear: bank account statements produced by Mr. Del Valle Rosado do not show regular mortgage payments, either before or after separation.
- [34] The only mortgage payments that appear in bank account statements were lump sum mortgage payments Mr. Del Valle Rosado made from the parties' Wells Fargo joint savings account on March 2 and 31, 2020 and October 1, 2020. Based on the exchange rates indicated on the bank statements, the lump sum payments totalled 73,870 MXN. The last of these three payments was made after the parties separated from a joint bank account that was a family asset.
- [35] The party alleging a debt bears the burden of establishing its existence and that it was incurred during the parties' relationship: *Chatha v. Uppal*, 2018 BCSC 6 at para. 309. While I accept that there was a mortgage on the Mexico house as of October 1, 2020, I am not able to determine based on the evidence at trial what was owing on the mortgage as of the date of separation or the date of trial. Based on the 2017 pay-out statement and the lump sum payments made in 2020, the amount owing on the mortgage would be less than 309,466 MXN if Mr. Del Valle Rosado made regular monthly payments in addition to the lump sum payments that appear in the bank statements; however, there are no bank account statements in evidence that show regular mortgage payments. The amount owing may be

zero if Mr. Del Valle Rosado made other lump sum payments from the parties' Wells Fargo chequing account or from some other bank account.

[36] Mr. Del Valle Rosado was evasive on cross-examination regarding rental income he received from the house in Mexico. Ms. Gonzalez Fricke testified that the property rented for the equivalent of \$360 CDN monthly for at least six years. Mr. Del Valle Rosado acknowledged receiving rental income for two years but says he still had to subsidize the mortgage payments by approximately \$100 CDN per month. Mr. Del Valle Rosado did not produce any documents to substantiate how much rental income was received and when. He did not declare rental income on his Canadian tax returns.

[37] Ms. Gonzalez Fricke argues that the net value of the Mexico property is approximately \$10,718.33 CDN based on a current value of 400,000 MXN, a mortgage owing of \$26,711 CDN as of April 22, 2021, and monthly payments of \$420 CDN since then. This submission is problematic in that mortgage payments, according to the pay-out schedule, would include an interest component, a principal component, and a fee. In other words, the entire mortgage payment would not have been applied to principal. However, I am not satisfied that the principal owing was in fact \$26,711 CDN as of April 22, 2021 given the lump sum payments made in 2020 and the absence of documents to corroborate that Mr. Del Valle Rosado made monthly mortgage payments after separation.

[38] In summary, Mr. Del Valle Rosado has failed to prove there is a mortgage owing on the house in Mexico. I find that the net value of the Mexico house is 400,000 MXN. Using the exchange rate Mr. Del Valle Rosado used for his most recent F8 financial statement, the net value of the Mexico house is approximately \$28,000 CDN.

ii) What are the other bank balances and investment accounts to be divided as family assets?

[39] The other family assets to be divided between the parties are the following assets that existed as of the date of separation:

- a) Ms. Gonzalez Fricke's two personal bank accounts;
- b) the parties' two Wells Fargo joint accounts (a chequing and a savings),
- c) a Fast Valle Wells Fargo chequing account; and
- d) an RRSP at Vancity invested in Clarington Funds.

[40] I am satisfied that Mr. Del Valle Rosado's 2019 income tax refund (\$4600.58) is a family asset, as it was owing at the date of separation and deposited to his account on June 18, 2020.

- a) Ms. Gonzalez Fricke's two personal bank accounts;

[41] As noted above, the parties agree that the balances in Ms. Gonzalez Fricke's personal bank accounts as of June 15, 2020 should be divided equally (account 6252 balance \$264.76; account 5787 balance \$3904.59).

b) and c) Wells Fargo accounts

- [42] I accept that the bank balances for the three Wells Fargo accounts constitute family property even though one account was in the name of Fast Valle. Mr. Del Valle Rosado controlled all three accounts, he regularly moved money between the joint accounts and Fast Valle's account at Wells Fargo, and he used corporate funds for his personal benefit.
- [43] The parties' joint savings account at Wells Fargo had a balance of \$1655 USD as of June 15, 2020. The Fast Valle account at Wells Fargo had a balance of \$6228 USD as of June 15, 2020. Mr. Del Valle Rosado did not produce account statements for the parties' joint chequing account for June 2020 (despite producing records from January 2020 to June 2021 for the other two Wells Fargo accounts). He acknowledged in cross-examination there were thousands of dollars in the joint chequing account as of June 2020. Mr. Del Valle Rosado transferred approximately \$8000 USD into the joint chequing account from the other Wells Fargo accounts between March 2020 to June 15, 2020; however, I accept that the transferred funds may have been required to pay a weekly \$567 USD truck lease if there was no trucking income at the start of the COVID-19 pandemic. Based on Mr. Del Valle Rosado's acknowledgment on cross-examination, I find that the Wells Fargo joint chequing account likely had a balance of at least \$2000 USD on June 15, 2020. Using the exchange rate proposed by the claimant (to which the respondent did not object), I find the three Wells Fargo accounts had a total value of approximately \$13,440 CDN as of June 15, 2020. These funds are a family asset to be divided.

d) RRSPs

- [44] Mr. Del Valle Rosado failed to provide adequate disclosure of documents related to his RRSP investments. There were no documents to confirm the value of his RRSPs as of the date of separation or as of the date of trial. Based on his testimony, as of the date of trial, Mr. Del Valle Rosado had one RRSP account at Vancity (the "Vancity RRSP"). Doing the best I can with the evidence available, I find that the Vancity RRSP balance of \$7400 CDN is a family asset to be divided and that Mr. Del Valle Rosado disposed of Vancity RRSP funds worth \$24,011 CDN (net of tax) after separation.
- [45] Mr. Del Valle Rosado testified that the current balance for his Vancity RRSP is \$7400 CDN. Given his lack of disclosure, I have little confidence that Mr. Del Valle Rosado's evidence is accurate. The only two RRSP statements provided by Mr. Del Valle Rosado are from 2021 and do not assist in determining the value of the Vancity RRSP investments as of the date of separation or the date of trial. The balance in the Vancity RRSP as of June 30, 2021 was \$7369.13 CDN. A confirmation of transaction statement dated August 27, 2021 shows that Mr. Del Valle Rosado moved \$3059.72 CDN from one investment fund to another within the Vancity RRSP; however, the confirmation of transaction statement does not indicate the total amount held in the Vancity RRSP.

[46] On the other hand, Mr. Del Valle Rosado's income tax returns and bank account statements reveal that he made the following post-separation withdrawals from RRSPs:

- a) \$21,500 CDN less \$3450 CDN in withholding tax in 2020; and
- b) \$6661 CDN less approximately \$700 CDN in withholding tax in 2021.

[47] I find that, after separation, Mr. Del Valle Rosado disposed of a family asset worth \$24,011 CDN, i.e., the value of the Vancity RRSP funds withdrawn net of tax. Mr. Del Valle Rosado testified that he used some of the Vancity RRSP funds to pay down credit card debt (which he claimed was family debt) and to pay lawyer fees. According to his bank account statements, Mr. Del Valle Rosado used RRSP funds to make extraordinary payments toward credit card debt in October 2020; however, as set out below, Mr. Del Valle Rosado failed to prove that the credit card balance owing as of that date was family debt. Mr. Del Valle Rosado received \$4550 CDN from cashing in RRSPs in December 2020. Based on his bank account statement for that month, he paid an additional \$550 CDN beyond his usual monthly payments toward credit card debts. He also withdrew close to \$3000 CDN in cash from his bank account in December 2020 after cashing in RRSPs. Mr. Del Valle Rosado withdrew RRSP funds (net \$5961 CDN) in late February and mid-March 2021, shortly before his consumer proposal: there are no documents to corroborate that he paid anything toward credit card debt following these RRSP withdrawals.

[48] In summary, Mr. Del Valle Rosado has failed to establish that his RRSP withdrawals were used to pay down family debt, and he must account for the net withdrawal in the final accounting of family assets and debts.

iii) Did Mr. Del Valle Rosado prove the trucking business loan?

[49] Mr. Del Valle Rosado alleges that he owes \$120,576.28 for a truck lease. I am not satisfied that he has met the onus on him to prove the debt.

[50] As noted, the party alleging a family debt bears the onus of proving it: Chatha at para. 309.

[51] Mr. Del Valle Rosado testified that he leased a Freightliner in 2018 to start a trucking business in the United States. I accept based on bank statements for the parties' Wells Fargo joint chequing account that Mr. Del Valle Rosado secured financing from H19 Capital Corporation that required weekly payments of \$576.92 USD. However, the lease itself is not in evidence, and there is no evidence regarding the original lease amount nor terms of the lease.

[52] I accept that the truck business suffered in 2020 as a result of the COVID-19 pandemic; however, the lack of full financial disclosure makes it difficult to determine how much business was done before or after the pandemic started. Mr. Del Valle Rosado only produced bank statements for the parties' Wells Fargo joint chequing account for the months of January and March 2021 and the first page for February 2021. As far as I can determine from the bank statements disclosed, income earned from trucking was deposited into and truck

lease payments were automatically withdrawn from the parties' Wells Fargo joint chequing account, i.e. Mr. Del Valle Rosado disclosed only limited bank statements for the trucking business' main operating account, making it impossible to establish the bank balance as of the date of separation and earnings from the trucking business in 2020.

- [53] Mr. Del Valle Rosado acknowledged in cross-examination that sometimes the truck was running in 2020 and sometimes it was sitting in the yard.
- [54] Mr. Del Valle Rosado received a letter dated August 23, 2021 from Hilco Receivables advising that it was authorized to collect receivables on behalf of the truck's lessor. The letter said the lessor reported an open balance of \$120,576.28 USD and asked Mr. Del Valle Rosado to remit that amount. Mr. Del Valle Rosado testified that he had no other documents related to the truck debt. The letter was admitted as evidence that Mr. Del Valle Rosado received it but not as proof of the truth of its contents.
- [55] Mr. Del Valle Rosado testified that the truck was repossessed by the lessor. He said this happened by the time the parties' Wells Fargo joint savings account closed in July 2021, but he did not say exactly when and how the truck was repossessed. It is not clear how the value of the truck correlated to any amount outstanding on the lease. He did not provide any documents to corroborate his testimony.
- [56] Mr. Del Valle Rosado has received no further demands for repayment of a debt to the lessor since August 23, 2021. Mr. Del Valle Rosado acknowledged on cross-examination that he does not know whether the debt to the lessor still exists.
- [57] As a result, Mr. Del Valle Rosado has failed to meet the onus on him to prove that he owes \$120,576.28 USD or any other amount with respect to the truck lease.

iv) What are the family debts to be divided?

- [58] The inadequate financial disclosure by Mr. Del Valle Rosado makes it difficult to determine the amount of family debts as of the date of separation and whether the amount of those debts changed between the date of separation and the date of trial. That said, I accept that he has proven that family debts at the date of separation were likely more than the amount of his consumer proposal made in March 2021. I accept that the total amount of Mr. Del Valle Rosado's consumer proposal is a family debt to be divided. Further, Mr. Del Valle Rosado should receive credit for some of the payments he made toward credit card and other debt after separation and before the consumer proposal.
- [59] Mr. Del Valle Rosado entered into a consumer proposal in March 2021. He testified that the proposal included \$56,000 in credit card and line of credit debt; however, he failed to disclose any documents to confirm the amount and nature of the debt included in the consumer proposal. He testified that his debt was approximately the same when he moved out of the family home (which was on November 30, 2020), but this evidence does not assist in determining the amount of family debt as of the date of separation (June 15, 2020).

- [60] I accept that the parties owed approximately \$20,000 on a National Bank line of credit as of the date of separation, a debt which was included in Mr. Del Valle Rosado's consumer proposal. The parties used the line of credit to pay a \$10,000 deposit on the Nissan vehicle in 2014 and approximately \$10,000 for in vitro fertilization in 2019. Bank account statements show regular monthly payments toward the line of credit debt before and after separation. There is no evidence that Mr. Del Valle Rosado drew from this line of credit after separation. I accept his evidence that the line of credit balance of \$20,000 was a family debt owing as of the date of separation.
- [61] The parties had three credit cards, and Ms. Gonzalez Fricke had secondary cards for two of these accounts. However, Mr. Del Valle Rosado failed to disclose the credit card statements to show the amounts owing as of June 2020. It is clear from his bank account statements that he made regular payments on all three credit cards from January 2020 to February 2021; however, there is no evidence to prove what the balances were for any of these family debts as of the date of separation and whether the balances increased after June 15, 2020, particularly from mid-July to early October, 2020 when Mr. Del Valle Rosado was on a leave of absence from his employment with W.D.I. Services Ltd. ("WDI"). Mr. Del Valle Rosado acknowledged in cross-examination that he used a credit card to pay for trips he took to Mexico and Texas in July 2020. That said, I accept that credit card payments made in June 2020 were likely in respect of family debt incurred prior to separation (i.e., \$5600).
- [62] Mr. Del Valle Rosado's bank account statements for the fall of 2020 show that he made significant payments toward credit card debt, but it is not clear those payments were made in respect of family debt. After Mr. Del Valle Rosado received \$13,500 in RRSP proceeds in October 2020, he paid \$6900 toward credit card debt: much higher than his usual monthly payments. His failure to disclose credit card statements from June 2020 to November 2020 prevents the Court from determining whether those payments were with respect to family debt incurred prior to separation or for credit card debt incurred post-separation when he was not working.
- [63] Mr. Del Valle Rosado's consumer proposal requires him to pay \$330 monthly for 60 months, for a total of \$19,800. I accept that family debt was likely greater than \$19,800 as of the date of separation and that family debt was subsumed in Mr. Del Valle Rosado's consumer proposal. The original amount payable for the consumer proposal should be divided as a family debt.
- [64] The amount of family debt includes the loan payments that became due post-separation, which Mr. Del Valle Rosado paid: *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at para. 34. This includes payments toward the National Bank line of credit, car insurance financing and the Nissan car loan. Mr. Del Valle Rosado should receive credit for paying down more of the family debt than did Ms. Gonzalez Fricke: *Stonehouse v. Stonehouse*, 2014 BCSC 1057 at para. 66.
- [65] I am satisfied that the following are family debts (valued as of the date of trial) and post-separation debt payments that should be shared by the parties:

- a) Ms. Gonzalez Fricke's Vancity Visa balance of \$1051.65 (as agreed);
 - b) negative balance in Mr. Del Valle Rosado's Vancity account: \$4457.64 (as agreed);
 - c) Mr. Del Valle Rosado's consumer proposal debt: \$19,800;
 - d) post-separation payments Mr. Del Valle Rosado made toward line of credit debt: \$785.96;
 - e) post-separation payments Mr. Del Valle Rosado made toward the Nissan car loan: \$1797.48;
 - f) post-separation payments Mr. Del Valle Rosado made toward credit card debt in June 2020: \$5600; and
 - g) post-separation payments Mr. Del Valle Rosado made to the Insurance Corporation of British Columbia for car insurance financing: \$669.20.
 - v) What is the net result of dividing family assets and debt equally?
- [66] The value of family assets including the Nissan vehicle, the house in Mexico, Mr. Del Valle Rosado's tax refund, bank accounts and investments totals \$91,620.93. Of this amount, Ms. Gonzalez Fricke has received the positive account balances from her two personal bank accounts (\$4169.35 in cash) and the value of the Nissan car (\$10,000), and Mr. Del Valle Rosado has received or disposed of the balance of the family assets.
- [67] The family debt to be shared totals \$ 34,161.93. But for Ms. Gonzalez Fricke's credit card debt of \$1051.65, all of this family debt has been paid or is payable by Mr. Del Valle Rosado.
- [68] In order to divide family assets and debts equally, Mr. Del Valle Rosado shall pay \$15,611.80 to Ms. Gonzalez Fricke, in part by transferring the remaining balance in the RRSP (\$7400) by way of spousal roll-over.
- b) Should income be imputed to Mr. Del Valle Rosado pursuant to the Guidelines for child support purposes?
- [69] Ms. Gonzalez Fricke says income should be imputed to Mr. Del Valle Rosado, as he has been deliberately under-employed since separation. Mr. Del Valle Rosado says his earnings reflect his earning capacity based on various injuries he has suffered. I am satisfied that income should be imputed to Mr. Del Valle Rosado for the time he took off work from July to early October 2020 and for the eight months he took off work to look after his terminally ill mother. I do not accept that Mr. Del Valle Rosado was not able to earn as much as he did prior to separation because of injury.
- [70] Section 147 of the Family Law Act imposes a duty on each parent to provide support for their children, and s. 149 authorizes a parent to apply for an order that the other parent pay child support. When ordering child support, the court must determine the amount payable by reference to the Guidelines, except in specific circumstances, which do not apply here: Family Law Act, s. 150.

- [71] Sections 16 to 20 of the Guidelines prescribe how to determine income for child support purposes. Section 16 establishes that the starting point for determining a spouse's annual income is the "Total income" set out in the spouse's T1 General form ("Line 15000 income"), subject to adjustments prescribed by ss. 17 to 20 and Schedule III of the Guidelines. Ms. Gonzalez Fricke relies on s. 19(1)(a), which allows the court to impute income to a spouse on the following basis:
- (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;
- [72] The focus of the analysis is whether the parent is earning what the parent is capable of earning: *Barker v. Barker*, 2005 BCCA 177 at paras. 17-20.
- [73] In this case, I find that Mr. Del Valle Rosado failed to earn what he was capable of earning because he took unpaid leaves of absence in the summer of 2020 and again from July 2021 to March 2022. He took the first leave of absence ostensibly to look into the status of his trucking business; however, I am not satisfied this explanation justified a two and a half month break from his steady employment. Mr. Del Valle Rosado's failure to disclose documents related to the trucking business' earnings in 2020 precludes a finding that the first leave was justified or justifiable.
- [74] Mr. Del Valle Rosado's decision to take an unpaid leave to look after his ailing mother, while understandable, is not recognized as justifying underemployment for the purposes of determining Guidelines income: *Barker* at para. 20.
- [75] In my view, it is reasonable to impute income to Mr. Del Valle Rosado based on his average earnings from employment in 2017 to 2019. It is not reasonable to impute income based on his average weekly earnings from 2020 to 2022, as I accept that he worked more than he might otherwise have worked when he returned from his leaves of absence in order to make up for missed wages. I accept that Mr. Del Valle Rosado likely took money out of the trucking company between 2018 and 2021 for his personal use, which was not reported on his tax return as a management salary or dividends. However, the missing Wells Fargo bank account statements prevent an accurate calculation of his true income for those years. As a result, the average annual earnings for 2017 to 2019 calculated using his income tax returns likely understate his true average annual income for those years, and as a result the amount of income imputed to Mr. Del Valle Rosado is conservative.
- [76] I will briefly review Mr. Del Valle Rosado's employment history and earnings before setting out my findings on imputed income.

Mr. Del Valle Rosado's employment history

- [77] Mr. Del Valle Rosado is 46 years old. He has worked for WDI as a furniture installer for approximately 15 years. He currently earns \$28.50 per hour. His job is physically demanding; he dismantles, moves and assembles heavy furniture. He and his co-workers must take care not to damage the furniture they are moving. He spends most of his day on his feet.
- [78] Mr. Del Valle Rosado moved to Canada shortly after completing a degree in economics from the University of Mexico at age 29. However, Mr. Del Valle Rosado's only employment in Canada has involved physical labour.
- [79] Mr. Del Valle Rosado has suffered various work injuries, including a lower back injury in 2018 or 2019, a left knee injury in 2020, and a concussion and neck injury in 2021. He was off work collecting workers compensation benefits after the back injury and concussion. He continued working after the knee injury. He said he did not work his usual overtime hours, but his bank account statements reflect payments for overtime in 2020 after his knee injury. Mr. Del Valle Rosado had x-rays and injections for his neck injury. He claims to have ongoing pain in his knee, neck and head and occasional low back pain.
- [80] Mr. Del Valle Rosado's income tax returns disclose the following Line 15000 income:
- 2017 \$90,242
- 2018 \$110,692
- 2019 \$84,598
- 2020 \$92,620
- 2021 \$56,194
- [81] Mr. Del Valle Rosado's final payslip from WDI for 2022 shows employment earnings of \$74,073.
- [82] Mr. Del Valle Rosado's average annual employment-related earnings for the years 2017 to 2019 was approximately \$93,500. Aside from earnings from WDI, Mr. Del Valle Rosado's Line 15000 income included the following:
- In 2018, RRSP income of \$5000;
 - In 2019, workers' compensation benefits of \$15,520;
 - In 2020, RRSP income of \$21,500 and workers' compensation benefits of \$682; and
 - in 2021, RRSP income of \$6661.45 and workers' compensation benefits of \$6694.

Mr. Del Valle Rosado confirmed on cross-examination that he worked at a reduced capacity in 2019 because of his work-related injuries. I have included workers' compensation benefits in my calculation of employment-related income.

- [83] I recognize that Mr. Del Valle Rosado's annual employment earnings for 2017 to 2019 include a significant amount of overtime. Where a spouse has consistently earned overtime and it is reasonable to expect that overtime would continue, it is reasonable to include overtime earnings when determining Guidelines income: *Benoit v. Benoit*, 2021 BCSC 1964 at para. 64; *Stevens v Stevens*, 2020 BCSC 1339 at paras. 44-49. As reflected in his 2022 payslips, Mr. Del Valle Rosado continues to work considerable overtime.
- [84] Mr. Del Valle Rosado's actual average annual income for 2017 to 2019 was higher than \$93,500. He acknowledged on cross-examination that he earned more in 2018 and 2019 than documented in his income tax returns because he did not report earnings from Fast Valle.
- [85] In 2018, with encouragement from his niece who owned a trucking company in Texas, Mr. Del Valle Rosado decided to get into the trucking business. As noted above, Mr. Del Valle Rosado leased a Freightliner truck for weekly lease payments of \$567 USD. The lease agreement was not in evidence, and Mr. Del Valle Rosado did not testify about the truck's original purchase price. He first told Ms. Gonzalez Fricke that he had acquired the truck three weeks after he signed the lease. Mr. Del Valle Rosado hired a driver, and the truck started operating in late April 2018.
- [86] On August 1, 2018, Mr. Del Valle Rosado incorporated Fast Valle with the assistance of a lawyer in Texas. I accept that Ms. Gonzalez Fricke had little understanding of the documents she signed naming her and Mr. Del Valle Rosado as directors and shareholders of the company and that she signed the documents because Mr. Del Valle Rosado told her to do so. It is clear that Mr. Del Valle Rosado ran Fast Valle and that Ms. Gonzalez Fricke had little to no involvement in the trucking business.
- [87] Fast Valle did not prepare financial statements or file tax returns. Mr. Del Valle Rosado confirmed that the trucking business started making profit about two months after the truck started running. Mr. Del Valle Rosado acknowledged on cross-examination that Fast Valle earned up to \$2000 USD per week, though sometimes the company lost money if the truck broke down.
- [88] I accept that the truck stopped operating, at least for a period of time, in the spring of 2020 due to the COVID-19 pandemic. The full extent of earnings from the trucking business is not discernible from the documents disclosed by Mr. Del Valle Rosado. Further, Mr. Del Valle Rosado admitting taking money from the trucking business for his personal use, but it is unclear how much he took. Mr. Del Valle Rosado only produced bank statements for the parties' joint chequing account at Wells Fargo for the months of January and March 2021 and an incomplete statement for February 2021; this was the key bank account from which truck lease payments were withdrawn and into which most trucking income was deposited. His incomplete disclosure makes it difficult to determine what happened with the trucking business and what happened to transfers of cash into the joint chequing account from the other two Wells Fargo accounts for which statements were produced. That said, based on the bank account statements that were produced and Mr. Del Valle Rosado's testimony, I

accept that he stopped making lease payments on the truck and that it was repossessed sometime in mid-2021. That was the end of the trucking business.

Basis for imputing income

- [89] I accept that it is appropriate to impute income to Mr. Del Valle Rosado for child support purposes for 2020. Mr. Del Valle Rosado's Guidelines income shall be set at \$93,500 based on his average annual employment-related earnings from 2017 to 2019 because he was intentionally under-employed from mid-July 2020 to early October 2020: Guidelines, s. 19(1)(a).
- [90] Mr. Del Valle Rosado took an unpaid leave of absence from WDI starting in July 2020 when he went to Mexico and El Paso, Texas to find out what was going on with the truck. He returned to work at WDI in early October 2020 after a two-week COVID-19 quarantine. Based on his limited workers compensation benefits, I am not convinced that his 2020 earnings were measurably lower due to his knee injury. Mr. Del Valle Rosado failed to prove that his 2020 earnings were lower for any other reason aside from his leave of absence.
- [91] I accept that it is appropriate to impute income to Mr. Del Valle Rosado for child support purposes for 2021 and 2022 as well. Mr. Del Valle Rosado took another unpaid leave of absence from July 11, 2021 to March 23, 2022 to look after his mother. His mother passed away on January 3, 2022, and he stayed an extra two months in Mexico to heal himself a little bit. I accept that it is appropriate to impute income to Mr. Del Valle Rosado for child support purposes as he was intentionally under-employed from July 11, 2021 to March 23, 2022: Guidelines, s. 19(1)(a). Mr. Del Valle Rosado failed to prove that his 2021 and 2022 earnings were lower for any other reason aside from his leave of absence.
- [92] I find that it is appropriate to impute income to Mr. Del Valle Rosado for 2021 based on his average annual employment-related earnings from 2017 to 2019. I accept that Mr. Del Valle Rosado missed an opportunity to work overtime when he was off work collecting workers compensation while recovering from his concussion in 2021. However, he also had no overtime earnings while collecting workers compensation for a longer period of time in 2019 (as reflected by the amount of benefits collected). In other words, the annual average earnings for 2017 to 2019 includes a period of disability and no overtime. Considering that Mr. Del Valle Rosado's actual earnings were higher for 2017-2019 than reported on his tax returns, I am satisfied that \$93,500 is a reasonable income to impute to him for child support purposes despite his period of disability in 2021.
- [93] Similarly, I am satisfied that it is appropriate to impute income to Mr. Del Valle Rosado for child support purposes for 2022 based on his average annual employment-related earnings from 2017 to 2019. In 2022, Mr. Del Valle Rosado worked approximately 36 weeks to generate employment earnings of \$74,073. As noted above, I accept that he worked more overtime than usual in order to make up for earnings missed for the first two and half months of 2022, and his average weekly earnings in 2022 do not provide a reasonable basis on which to

impute income for under-employment for the entire year.

[94] Despite his failure to disclose documents, I am not prepared to impute additional income to Mr. Del Valle Rosado pursuant to s. 23 of the Guidelines. I am not able to determine what amount, if any, would be appropriate to attribute to Mr. Del Valle Rosado in respect of earnings from Fast Valle, and I am satisfied that imputing income to Mr. Del Valle Rosado based on his average employment-related earnings at WDI is reasonable.

[95] In summary, I accept that income should be imputed to Mr. Del Valle Rosado for child support purposes from June 15, 2020 to the end of 2022. His Guidelines income for that period shall be set at \$93,500.

c) Is Ms. Gonzalez Fricke entitled to spousal support?

[96] Entitlement is a threshold issue to any award for spousal support.

[97] Ms. Gonzalez Fricke's claim for spousal support is made pursuant to both the Divorce Act, R.S.C. 1985, (2nd Supp.), c. 3 and the Family Law Act.

[98] Section 15.2(6) of the Divorce Act sets out the objectives for a spousal support order, and s. 15.2(4) sets out the factors to consider when assessing the spouses' condition, means, needs and other circumstances.

[99] Sections 160-162 and 165 of the Family Law Act provide the legislative framework for ordering spousal support. If a spouse is entitled to spousal support after considering the objectives listed in s. 161 of the Family Law Act, then the amount and duration of spousal support must be determined based on the conditions, means, needs, and other circumstances of each spouse: Family Law Act, ss. 160, 162. Section 165 of the Family Law Act authorizes the courts to order spousal support in the amount it considers appropriate once entitlement is established.

[100] I am satisfied that the order for spousal support should be made pursuant to the Divorce Act: L.H. v. C.H., 2019 BCSC 1346 at paras. 278-81. In this case, there is no operational inconsistency between the Family Law Act and the Divorce Act.

[101] The Supreme Court of Canada has identified that the purpose of spousal support "is to relieve economic hardship that results from 'marriage or its breakdown'" (emphasis in original): Moge v. Moge, [1992] 3 S.C.R. 813 at 848, 1992 CanLII 25. Marital partners "should expect and are entitled to share [the] financial benefits" that are generated from the marriage: Moge at 849. Those financial benefits can be equally distributed in many ways, including through spousal support and division of assets: Moge at 849. The Court must consider "the respective advantages and disadvantages of the spouses as a result of their roles in the marriage": Moge at 849.

[102] The Supreme Court of Canada has identified three grounds for entitlement to spousal support:

- a) compensatory support, which relates primarily to the first two objectives set out in s. 15.2(6) of the Divorce Act;
- b) non-compensatory support, which relates primarily to the final two objectives set out in s. 15.2(6) of the Divorce Act; and
- c) contractual support.

[103] Ms. Gonzalez Fricke claims spousal support based on compensatory and non-compensatory grounds. I accept that Ms. Gonzalez Fricke is entitled to spousal support on compensatory grounds after the parties' traditional marriage ended. Further, despite her impressive efforts to re-train and join the workforce, I am satisfied that Ms. Gonzalez Fricke has been left in a weaker economic position as a result of the marriage and its breakdown. I also accept that she is entitled to spousal support based on non-compensatory grounds.

[104] I will briefly review Ms. Gonzalez Fricke's employment history and her role in the marriage before turning to the analysis of her entitlement to spousal support.

Ms. Gonzalez Fricke's employment history and role in the marriage

[105] Ms. Gonzalez Fricke is 47 years old. When she separated from her first husband in 2007, her two children were ages seven and one, but she received no child support. Ms. Gonzalez Fricke's father supported her and the children.

[106] The parties started dating in April 2009. At the time, Mr. Del Valle Rosado was living in Canada, and Ms. Gonzalez Fricke was living in Mexico. He visited her in Mexico, and they had regular video calls. Mr. Del Valle Rosado started sending financial support to Ms. Gonzalez Fricke in October 2010, at least \$1000 per month. They married in December 2010.

[107] Ms. Gonzalez Fricke had limited work experience before moving to Canada in July 2012. In the six months before moving here, she worked part-time as an assistant to her sister who is a realtor in Mexico.

[108] When she moved to Canada, Ms. Gonzalez Fricke was a homemaker responsible for the family's meals, laundry (including Mr. Del Valle Rosado's work uniforms), housework and childcare. Mr. Del Valle Rosado worked more than 40 hours per week, sometimes seven days a week. He filled the role of provider.

[109] Before moving to Canada, Ms. Gonzalez Fricke spoke no English. She started taking English-language classes when she arrived in Canada. A started grade two in the fall of 2012. At some point, Ms. Gonzalez Fricke started volunteering at his school two days per week. A has special needs that affect his learning, and Ms. Gonzalez Fricke spent extra time helping him with his schooling and meeting with school counsellors.

- [110] Mr. Del Valle Rosado says that he repeatedly asked Ms. Gonzalez Fricke to get a part-time job to help pay family expenses. He says that Ms. Gonzalez Fricke avoided such conversations because she wanted to stay home and be a mother. Mr. Del Valle Rosado's evidence was not put to Ms. Gonzalez Fricke on cross-examination, contrary to the rule in *Browne v. Dunn* (1893), 6 R. 67, 1893 CanLII 65 (U.K.H.L.). She was not challenged on her evidence-in-chief that Mr. Del Valle Rosado did not really ask her to get a job but instead he encouraged her to keep learning, by taking English and other courses. On balance, I prefer Ms. Gonzalez Fricke's evidence on this point, in part because her resume confirms that she took various courses when she came to Canada from 2012 to 2016. Mr. Del Valle Rosado did not deny that he assured Ms. Gonzalez Fricke and her father that she did not need to worry, that he would support her financially.
- [111] In 2018, some of Ms. Gonzalez Fricke's friends were working in early childhood education. Ms. Gonzalez Fricke had earned a certificate to be an early childhood education assistant by then. She was hired to be an early childhood education assistant in October 2018. Ms. Gonzalez Fricke resigned from this position in February 2019 in order to focus on the parties' efforts to conceive a child together through in vitro fertilization. Mr. Del Valle Rosado says she quit because she did not like commuting and she did not want to work; again, I prefer Ms. Gonzalez Fricke's evidence as it remained unchallenged on cross-examination and her explanation is plausible in terms of the timing and the demands of the in vitro fertilization treatments.
- [112] When the parties separated in June 2020, Ms. Gonzalez Fricke had worked for less than five months since coming to Canada in July 2012. She recognized that she would not be able to support herself and A by working as an early childhood education assistant.
- [113] In September 2020, Ms. Gonzalez Fricke prepared an action plan with WorkBC to help her work towards financial independence. WorkBC funded counselling for Ms. Gonzalez Fricke, helped her determine a career path, gave workshops on job skills, and helped her apply for government funding for a health care assistant training program. Ms. Gonzalez Fricke started full-time studies in February 2021 and completed a health care assistant course in September 17, 2021.
- [114] Ms. Gonzalez Fricke was able to complete her training program as scheduled despite being diagnosed with thyroid cancer in April 2021. She underwent surgery to remove her thyroid and some lymph nodes on May 5, 2021. She was able to continue her studies online while she recovered. She had further treatment in September 2021 and again a few months later. Ms. Gonzalez Fricke is currently cancer-free.

- [115] After graduating in September 2021, Ms. Gonzalez Fricke secured a position with a private long-term care home in Coquitlam starting October 2021. Soon after, Providence Health offered her a job, and Ms. Gonzalez Fricke started as a casual health care assistant on November 1, 2021. She felt the unionized position with Providence offered advantages over working in the private sector, including benefits and a pension once she becomes a full-time employee.
- [116] Ms. Gonzalez Fricke generally works between two and four shifts per week. Available shifts are posted online, and Ms. Gonzalez Fricke bids for the shifts she wants to work. Each eight-hour shift (seven and a half hours paid) is allocated based on seniority, so she is not always successful in securing the shifts for which she applies. I accept that she tries to secure as many shifts as she can.
- [117] Mr. Del Valle Rosado's counsel tried to suggest to Ms. Gonzalez Fricke in cross-examination that she actually worked more hours, up to 121.34 hours for the two-week pay period ending December 16, 2022. I accept Ms. Gonzalez Fricke's explanation that the payslip in question reflects payment for a retroactive wage increase. A close reading of the payslip suggests that she actually worked 45 hours over two weeks, consistent with two to four shifts per week.
- [118] Mr. Del Valle Rosado argues that Ms. Gonzalez Fricke failed to provide income information and was deliberately vague about the number of shifts she worked and whether she worked overtime. I am satisfied that Ms. Gonzalez Fricke provided reasonable disclosure about her income: she provided income tax returns and payslips for the end of 2022 that confirm her evidence regarding how many shifts she worked on average. For example, her payslip dated December 30, 2022 confirmed that Ms. Gonzalez Fricke earned \$30,420.99 from Providence Health Care in 2022. Based on her hourly rate, this is the equivalent of approximately 20 hours per week, i.e. an average of two to three shifts per week.
- [119] I accept Ms. Gonzalez Fricke's evidence that she does not review her payslips carefully to determine when she receives overtime, that her limited overtime earnings related to statutory holidays she worked and that her understanding of overtime is working more than 40 hours in a week (which she has not done). As noted above, I accept that Ms. Gonzalez Fricke is not adept with numbers. It is not surprising that she pays little attention to her payslip and that she had difficulty explaining all of the entries on the payslips put to her in cross-examination.
- [120] Ms. Gonzalez Fricke continues to be a casual employee with Providence, but her seniority is increasing and she hopes with time to become a regular full-time or regular part-time employee. I accept that it is reasonable for Ms. Gonzalez Fricke to continue to work with Providence rather than trying to find a lower paying full-time position in the private sector. Since December 2022, Ms. Gonzalez Fricke's usual hourly rate is \$26.93 per hour.

Compensatory grounds

- [121] Justice Rowles summarized the purpose of compensatory spousal support as follows in *Chutter v. Chutter*, 2008 BCCA 507:
- [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 (citations omitted)
- [122] I accept that Ms. Gonzalez Fricke assumed primary childcare and household responsibilities within the family. In doing so, she lost the potential to secure job seniority and lacks access to employment benefits. She continues to suffer an economic disadvantage by joining the workforce later than she might have if she had not taken on the family's household responsibilities. This delayed entry is significant and continues to affect her earning capacity in her current occupation where shifts are assigned based on seniority.
- [123] On the other hand, during the marriage, Mr. Del Valle Rosado was able to work considerable overtime and benefitted from Ms. Gonzalez Fricke's role in looking after the household (including laundering his work uniforms) and taking primary responsibility for the children.
- [124] Mr. Del Valle Rosado says that Ms. Gonzalez Fricke suffered no economic disadvantage arising from the marriage because she had limited economic prospects as an unemployed single mother with two young children living in Mexico and no obvious career opportunities when the parties married. He says she did not give up any economic opportunities as a result of the marriage. Mr. Del Valle Rosado's argument ignores the extended family support Ms. Gonzalez Fricke left behind in Mexico (including her father and sister) when she immigrated to Canada with only her new husband to support her. His argument also ignores the contribution Ms. Gonzalez Fricke made to the family by taking on household responsibilities. When they were together, the parties were in a joint enterprise to which each contributed in different ways. Ms. Gonzalez Fricke's contribution should not be discounted.

Non-compensatory grounds

- [125] Justice Rowles summarized the purpose of non-compensatory spousal support as follows in *Chutter*:
- [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.

[126] Mr. Del Valle Rosado says that Ms. Gonzalez Fricke is not entitled to spousal support on non-compensatory grounds on the basis that

- a) she has not suffered any economic hardship from the breakdown of the marriage; and
- b) she is capable of self-sufficiency now but she chooses not to work full-time.

[127] Mr. Del Valle Rosado's essential argument is that if Ms. Gonzalez Fricke worked full-time, she would be self-sufficient and there would be no economic hardship as a result of the breakdown of the marriage. Mr. Del Valle Rosado's argument ignores the financial needs Ms. Gonzalez Fricke had when the parties separated and the lack of means she had to meet those needs given her limited work history in Canada.

[128] I accept that Ms. Gonzalez Fricke is entitled to spousal support based on non-compensatory grounds on the basis of her financial need in the immediate aftermath of the parties' separation. I am satisfied that Ms. Gonzalez Fricke has made reasonable efforts to achieve self-sufficiency. Mr. Del Valle Rosado has not proven that income should be imputed to Ms. Gonzalez Fricke (as explained below), particularly in the initial post-separation period.

[129] When the parties separated, Ms. Gonzalez Fricke had no source of income aside from child tax benefits. She did not receive any social assistance during her training program. She depended on without-prejudice support payments from Mr. Del Valle Rosado, loans from friends, and the food bank. The primary burden of meeting Ms. Gonzalez Fricke's financial needs upon the breakdown of the marriage rested with Mr. Del Valle Rosado.

d) What spousal support is Ms. Gonzalez Fricke entitled to receive?

[130] Ms. Gonzalez Fricke argues that spousal support should be payable retroactively based on the mid-point of the Spousal Support Advisory Guidelines ("SSAG") using the same Guidelines income used to calculate child support. She says that spousal support should be payable for another four years at a rate of \$712 per month based on the difference between her earnings and her budget. After four years, she says spousal support should be reviewed for quantum or entitlement or both.

[131] Mr. Del Valle Rosado argued that the SSAG provides an exception to applying the spousal support ranges where total family debts exceed the value of family assets and the payor's assets. This exception requires that the qualifying debts must be "family debts" and that the debt payments must be "excessive or unusually high". As set out above, Mr. Del Valle Rosado failed to prove all of the debts he alleged. I have not found that family debts exceed family assets. In any event, the consumer proposal payments are not excessively or unusually

high. In my view, the division of the family assets and debts in this case do not affect the amount of spousal support payable.

- [132] Although Ms. Gonzalez Fricke has made great strides and reasonable efforts toward self-sufficiency, I accept that she is not yet self-sufficient. A spouse is not obliged to become self-sufficient following a marriage breakdown, but rather is "obliged to make reasonable efforts to achieve self-sufficiency": *Hsieh v. Lui*, 2017 BCCA 51 at para. 47. If the spouse fails to make such efforts, then the court may impute income and reduce the amount of spousal support payable: *Hsieh* at para. 47. In this case, Ms. Gonzalez Fricke has made reasonable efforts to achieve self-sufficiency, and her failure to become completely self-sufficient three years post-separation (especially considering where she started) is not a reason to impute income to her.
- [133] A party seeking to impute income to the other party for intentional under-employment bears the onus of establishing an evidentiary basis for such a finding, based on the other party's capacity to earn in light of their age, education, health, work history and work availability: *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 3-6-37.
- [134] Mr. Del Valle Rosado has failed to establish that Ms. Gonzalez Fricke is under-employed. Mr. Del Valle Rosado argues that Ms. Gonzalez Fricke is under-employed because she does not try to obtain shifts at another health facility other than the one where she is currently employed. However, I accept that it is reasonable at this point for Ms. Gonzalez Fricke to apply for shifts only at one health facility. Prior to November 30, 2022, Ms. Gonzalez Fricke was limited to working at only one health facility due to COVID-19 restrictions. Despite lifting of COVID-19 restrictions, Ms. Gonzalez Fricke continues to seek shifts only at one facility. I accept that it is reasonable for her to do so, because she is familiar with the patients and their routines, she is still learning in her new career, and applying for shifts at different facilities could lead to complications if she bids for and is assigned to work for the same shift at different facilities. In any event, I am not satisfied that the evidence establishes that Ms. Gonzalez Fricke would actually obtain more shifts if she bid at different facilities. There was no evidence that her seniority would result in successful bidding on shifts at other facilities.
- [135] I accept that Ms. Gonzalez Fricke's annual income to the date of trial for spousal support purposes is as follows:
- 2020 \$500
- 2021 \$12,028
- 2022 \$30,420.99
- [136] I accept that it is appropriate to impute the same income to Mr. Del Valle Rosado for spousal support purposes as for child support, i.e., \$93,500 from 2020 to 2022.

- [137] The SSAG provide guidance to the Court in making appropriate spousal support awards: *Yemchuk v. Yemchuk*, 2005 BCCA 406 at para. 64.
- [138] In this case, I find that it is appropriate to award spousal support for a shorter duration in an amount slightly above the mid-range. Although Ms. Fricke Gonzalez has a compensatory claim for spousal support for the reasons outlined above, her claim is not particularly strong: she has not demonstrated that she gave up any particular career opportunities or that Mr. Del Valle Rosado's career was advanced as a result of her career sacrifices. She has a stronger non-compensatory claim and had the greatest need for support in the immediate post-separation period. A reaches the age of majority in August 2024, and he was scheduled to graduate from high school in June 2023, which means that the claimant's responsibility to care for A is diminished. Both parties earn approximately the same hourly wage. The main difference in their annual earnings is attributable to the number of hours each of them works. Ms. Fricke Gonzalez's delayed entry into the labour market affects her seniority and in turn how many hours she is able to secure. There was no evidence as to how long it will take for her to have enough seniority to secure full-time hours or regular employment with Providence. On the other hand, Mr. Del Valle Rosado's higher earnings reflect a significant amount of overtime, which he will lose the incentive to work if the spousal support award is unduly onerous. Going forward, her needs in the transition to self-sufficiency must be balanced with his incentive to continue working as much as he demonstrated he is able.
- [139] The duration range for spousal support is guided by the length of the parties' marriage (i.e., 9.5 years), which gives a range for duration of spousal support of 4.75 to 9.5 years. I am satisfied that spousal support should continue until June 2025, i.e. five years after separation. By that point, Ms. Fricke Gonzalez will have three and a half years of experience in her new career, which may give her enough seniority to secure more shifts. She should also have enough familiarity with her job duties to be able to work at more than one facility with different patients.
- [140] Based on Divorce Mate with-child-support calculations using Mr. Del Valle Rosado's imputed earnings of \$93,500 and Ms. Fricke Gonzalez's actual annual earning, I find the following monthly spousal support amounts ought to have been paid in addition to child support:
- 2020 \$2050
- 2021 \$1350
- 2022 \$800
- [141] As noted, these spousal support amounts are slightly above the mid-point for the reasons outlined above.

[142] Spousal support shall continue to be payable at a rate of \$800 on the first of each month from now until and including June 1, 2025, unless child support ends before that date, in which case spousal support shall increase to \$1400 for the remainder of the time that spousal support is payable.

d) Is retroactive support payable after accounting for interim support payments made by Mr. Del Valle Rosado?

[143] Mr. Del Valle Rosado ought to have paid child support from July 1, 2020 to August 1, 2023 based on his income of \$93,500, i.e., \$890 per month for 37 months: \$32,930.

[144] Mr. Del Valle Rosado ought to have paid spousal support as set out above from July 1, 2020 to August 1, 2023 for a total of \$42,900.

[145] I find that Mr. Del Valle Rosado made the following support payments or equivalent from June 15, 2020 to the date of trial:

- a) rental payment of \$1978 per month from July 1, 2020 to December 1, 2020 (half for October and November when he returned to live at former family apartment): \$7912;
- b) rent subsidy of \$1328 per month from December 1, 2020 to August 1, 2021: \$11,952
- c) e-transfers for bi-monthly allowance of \$130 from June 15, 2020 to September 11, 2020: \$780;
- d) without-prejudice interim spousal support of \$612 from December 1, 2021 to February 1, 2023: \$8568; and
- e) without-prejudice interim child support of \$390 per month from December 1, 2021 to February 1, 2023: \$5850.

These payments total \$35,062.

[146] As a result, Mr. Del Valle Rosado owes \$40,768 in retroactive child and spousal support, subject to any payments made after February 1, 2023. If he continued to pay child support of \$390 per month and spousal support of \$612 since March 1, 2023, then the amount owing for retroactive child and spousal support would be \$34,756.

Order

[147] In the result, I make the following orders:

- a) The parties shall be divorced, effective the thirty-first day after the date of this judgment;
- b) Mr. Del Valle Rosado's Guidelines income is imputed to be \$93,500;
- c) Mr. Del Valle Rosado shall pay monthly child support in the amount of \$890 based on his Guidelines income for A for so long as A remains a child of the marriage;

- d) Mr. Del Valle Rosado shall pay monthly spousal support to Ms. Gonzalez Fricke on a compensatory and non-compensatory basis, in the amount of \$800 per month starting September 1, 2023 until June 1, 2025;
 - e) If A ceases to be a child of the marriage prior to June 1, 2025, then Mr. Del Valle Rosado shall pay monthly spousal support to Ms. Gonzalez Fricke on a compensatory and non-compensatory basis in the amount of \$1400 per month starting the first of the month after A is no longer a child of the marriage until June 1, 2025;
 - f) Mr. Del Valle Rosado shall pay to Ms. Gonzalez Fricke \$1000 a month toward support arrears / as retroactive child and spousal support payment starting September 1, 2023 until the arrears are paid;
 - g) Mr. Del Valle Rosado shall transfer the balance of the Vancity RRSP to Ms. Gonzalez Fricke by way of s. 85 spousal roll-over by October 31, 2023; and
 - h) Mr. Del Valle Rosado shall pay to Ms. Gonzalez Fricke \$15,611.80 less the value of the Vancity RRSP on the date of transfer on account of equal division of the family assets and debts.
- [148] Ms. Gonzalez Fricke is entitled to costs, subject to any offers or other matters that may affect costs. The parties may arrange with court scheduling in the next 30 days to make submissions before me on any costs issues arising from these orders.

"Lamb J."

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