

CANADA / JUDGMENT

Goodhew v. Summers

2022 BCSC 1080

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1080 Goodhew v. Summers IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Goodhew v. Summers, 2022 BCSC 1080 Date: 20220628 Docket: E064210 Registry:

Vancouver Between: Kent Leonard David Goodhew Claimant And Ruth Summers Respondent

Before: The Honourable Madam Justice D. MacDonald Reasons for Judgment The Claimant,

appearing in person: K. Goodhew Counsel for the Respondent: L. Allan Place and Dates of Trial:

Vancouver, B.C. January 31, February 2-4, 7-11, 14-26, April 12-13, 2022 Place and Date of

Judgment: Vancouver, B.C. June 28, 2022 Table of Contents Overview.. 3 Background. 3 Parties'

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- [1] This is a high conflict family dispute. The claimant is Kent Goodhew and the respondent is Ruth Summers. The parties were married in 1999 and separated in 2006. They have two children: Joshua born in 2003 and Marley born in 2005. The parties shared parenting of their children from the date of separation until August 2020.
- [2] The outstanding issues are child support and s. 7 expenses dating back to 2012. Both parties claim the other party owes significant child support arrears for the years 2012 to 2020, as well as outstanding s. 7 expenses. To determine these issues, I must establish the parties' incomes for support purposes using the Federal Child Support Guidelines, SOR 97/175 [Guidelines]. This is highly contentious.
- [3] The claimant owes \$6,000 in outstanding costs awards. There is an order for special costs that has not been assessed as the parties have not yet entered the order.

Background

- [4] The parties separated in November 2006. In December 2006, the claimant filed a statement of claim under the Family Relations Act, R.S.B.C. 1996, c. 128. It includes a claim for maintenance or support of the children. Ms. Summers filed a counterclaim in April 2007.
- [5] On January 29, 2007, the parties signed a separation agreement which addressed custody, child support, and a parenting schedule (the "Separation Agreement"). The Separation Agreement provided that the parties would have shared custody of the children on a week on/week off schedule. As a result, child support was to be determined on a set-off basis, using the parties' respective base salaries.
- [6] The parties were divorced by desk order in March 2008. The remaining relief in the family proceeding was adjourned generally by consent.
- [7] Between 2006 and 2010, the parties earned relatively high incomes and there were few disputes regarding the child support set-off amounts. However, in 2012, the issue of child support became more contentious. In 2011, the claimant switched careers. He incorporated a company and purchased a COBS Bread franchise ("COBS Bread"). As a result of the switch, Mr. Goodhew claimed that his income was substantially reduced. Ms. Summers claimed that Mr. Goodhew's income was impossible to determine without disclosure of his financial records.
- [8] In March 2012, the claimant filed an application to compel Ms. Summers to pay him child support, including retroactive child support. On May 4, 2012, the parties appeared before Master Tokarek, who granted a consent order. The terms of that order include:
 - i. On an interim, without prejudice basis, an annual Guidelines income of \$243,000 is determined for the respondent, and \$127,000 for the claimant; ii. On an interim, without prejudice basis, the respondent will pay \$1,452 per month in child support until trial, or further order of the Court or agreement by the parties; and iii. The issue of child support shall be referred to the trial list, with each party to have the usual rights of discovery. (the "Tokarek Order").
- [9] On July 3, 2012, the parties appeared before Justice Leask for what was supposed to be a trial of outstanding child support issues. Justice Leask converted the trial into a settlement conference. The parties agreed upon a without prejudice consent order which addressed retroactive child support and s. 7 expenses until the end of 2011. The Order includes the following terms:

- i. On a without prejudice basis, an annual Guidelines income of \$120,000 is determined for the respondent, and \$45,000 for the claimant; ii. On a without prejudice basis, the respondent will pay child support in the amount of \$1,000 per month until further agreement between the parties or further order of the Court; iii. The parties will exchange information about their respective incomes; iv. Justice Leask will be seized of the child support issues for the years 2012 and 2013; and
 - v. There will be a review of parenting time and child support in January 2013, on the following terms: BY CONSENT, on January 17, 2013 at four p.m. (4:00 p.m.) at the Vancouver Law Courts, there shall be a review of the parenting time exercised by the Respondent in 2012, the Respondent's income for 2012 and the Claimant's income including the profit of his business, [COBS] Bread, in 2012, to determine child support payable for the children for the year 2012. (the "Leask Order").
- [10] The term in the Leask Order requiring the respondent to pay \$1,000 per month in child support was not intended to have enduring effect. The Leask Order anticipated that child support payable for 2012 would be finally determined at a review in January 2013 once the parties had exchanged their financial information.
- [11] In December 2012, there was an exchange of emails between counsel. The claimant was seeking an adjournment of the January 17, 2013 hearing date. Ms. Summers agreed to an adjournment on the condition that her obligation to pay monthly child support under the Leask Order was suspended in the interim. In an email dated December 18, 2012, counsel for Mr. Goodhew stated: My client has agreed that Ms. Summers may stop paying child support until we are before the court again, but I add the caveat that if the date is too far in the future there may need to be further discussions about that [Emphasis added].
- [12] The parties appeared again before Justice Leask on April 9, 2013. They were unable to come to a resolution and no orders were made.
- [13] After the April 2013 appearance, neither party took proactive steps to reschedule a court hearing to address child support. The respondent testified she assumed the claimant was doing well with his business and was satisfied with each party covering their own child support expenses while the children were in their care. Ms. Summers took the position that child support payments were suspended as a result of the December 18, 2012 email between counsel. She assumed that she did not need to pay child support until the matter could be resolved in court following proper financial disclosure by the parties.
- [14] Mr. Goodhew did not pursue the matter again for almost three years. However, he did so in December 2015. Between December 2015 and the spring of 2016, the parties exchanged a series of emails. The outstanding financial issues were debated but the parties reached no consensus about how to address them. Mr. Goodhew admitted in testimony that he got angry when Ms. Summers' responses were not helpful.

- [15] In June 2016 Mr. Goodhew registered the Leask Order with the Family Maintenance Enforcement Program ("FMEP"). Ms. Summers testified that she had no advance notice that the claimant intended to take this step. She only learned of it when she received a letter from FMEP stating that she owed approximately \$50,000 in child support arrears. This amount was calculated on the assumption that Ms. Summers had not paid any child support under the Tokarek Order or the Leask Order.
- [16] Ms. Summers testified that the outstanding \$50,000 in child support arrears was an incredibly draining and stressful situation for her. Ms. Summers also testified that the FMEP calculations were incorrect. She testified that she had made monthly child support payments until December 2012 when the parties agreed that her support payments could be suspended.
- [17] Ms. Summers disagreed that she was required to make any child support payments after December 2012. When she presented FMEP with the December 18, 2012 email exchange between counsel, she was told that FMEP only followed court orders and could not take the 2012 emails into account. FMEP advised her that she should retain legal counsel to resolve the issues.
- [18] The claimant disputes Ms. Summers' assertion that there was an agreement that she was not required to pay child support until the contested issues regarding income were resolved. He takes the position that the email agreement was time limited.
- [19] In September 2016, Ms. Summers left her former employment to start a wine import business. This created uncertainty about her income.
- [20] Ms. Summers retained legal counsel and she requested information from Mr. Goodhew relating to his COBS Bread franchise. When Mr. Goodhew did not respond, Ms. Summers filed a notice of application on September 16, 2016. She sought to compel the claimant to produce financial information, including personal and corporate tax returns dating back to 2012. Ms. Summers further sought a suspension of her obligation to pay child support pending a determination of retroactive and ongoing child support. Lastly, she sought an order staying the enforcement of arrears registered by FMEP.
- [21] On October 24, 2016, prior to this application being heard, the parties signed a consent order. It addressed, on an interim and without prejudice basis, the following orders:
1. By consent and without prejudice, the respondent's child support obligations will be suspended for two months, beginning October 1, 2016;
 2. By consent and without prejudice, FMEP shall cease all enforcement measures for two months, beginning October 1, 2016; and
 3. By consent the parties shall both produce a list, which is particularized in the order, of personal and corporate tax and financial records. (the "2016 Consent Order").

- [22] Both parties argue that the other party failed to provide the financial disclosure required by the 2016 Consent Order. There were some exchanges between counsel. Ms. Summers provided additional financial information to Mr. Goodhew. Mr. Goodhew asserted that documents were missing. Ms. Summers disagreed.
- [23] Mr. Goodhew provided a list of documents, updated to January 13, 2017 which included documents for the years 2012 to 2015. There was also some disclosure regarding the year 2016. Mr. Goodhew provided notice on March 10, 2017 that he was no longer represented by legal counsel. He continued to assert that Ms. Summers had not provided complete financial disclosure.
- [24] Following the disclosure of Mr. Goodhew's list of documents in January 2017, Ms. Summers reviewed and analysed his documents. She concluded that his income exceeded what he claimed on his tax returns. She swore an affidavit stating that Mr. Goodhew's business generated income for him between \$133,000 to \$170,000.
- [25] Ms. Summers filed an application in November 2016. In her application, she sought an order imputing income to the claimant and an order that he pay a fine for non-disclosure of financial information. The matter was heard by Justice Kent along with four other applications. In his Reasons for Judgment on June 15, 2017, Kent J. described the applications as follows:
- [4] There are five applications before me today. Four are brought by the former wife relating to conduct, disclosure, suspension of enforcement mechanisms, imputing income and generally addressing both past and future child support obligations. In addition, there is an application late filed by the former husband seeking similar relief with respect to the child support issues.
- [26] Justice Kent observed that, based on the parties' reported Line 150 incomes on their personal tax returns, Ms. Summers had a substantially higher income than Mr. Goodhew from 2012 to 2016. Yet Kent J. emphasized that it was open to Ms. Summers to establish that the claimant's Line 150 income did not reflect his actual income for child support purposes. If so, she could demand relevant financial disclosure. Justice Kent explained:
- [18] Of course, given the joint custody scenario, one cannot do the actual calculations retroactively without a forensic analysis of the husband's financial affairs. If one was to accept his line 150 income as being a genuine representation of his income for child support purposes, those calculations would be fairly simple and would result in a much higher amount than what is currently claimed. I am satisfied, however, that there has not been timely disclosure by the husband and a combative attitude has been adopted which has made it difficult for the wife and her counsel to reconcile numbers and accept that his line 150 income is the appropriate number to use. Some fault for that lies with the husband.

[27] Justice Kent ultimately concluded that he was unable to determine these issues on a chambers application and the issues should go to trial. He issued the following interim orders:

1. The matter will be set down for a two-week trial in February 2018;
2. The further enforcement of arrears by FMEP is suspended pending further order of the Court;
3. On an interim basis, an annual income of \$60,000 is imputed to each party for present child support purposes, subject to redetermination at trial;
4. All s. 7 expenses, which must first be agreed to between the parties before being incurred, will, on an interim basis, be shared 50/50, subject to redistribution at trial;
5. The parties will strictly abide by orders that have been made to date respecting the production of financial documents; and
6. On demand, each party shall disclose forensic information about their corporate finances, including general ledgers, loans, and other financial documents. (the "Kent Order").

[28] The Kent Order imputed \$60,000 in annual income to both parties so there would be no child support paid by either party. It further suspended the enforcement of arrears.

[29] The February 2018 trial date ordered by Kent J. was adjourned at a trial management conference ("TMC") on February 5, 2018. Ms. Summers says this adjournment was due to the claimant's non-disclosure of financial information although Mr. Goodhew denies this. A term of the TMC order was that Mr. Goodhew provide Ms. Summers' counsel with a list of dates for examinations for discovery. He failed to do so.

[30] A new ten-day trial was scheduled for June 2020. Ms. Summers again applied for document disclosure in August 2019 in an effort to ensure the trial could proceed. The claimant did not respond and he did not appear. Justice Morellato made an order on August 30, 2019 with the following terms:

1. The claimant shall prepare and serve an updated list of documents by September 30, 2019;
2. Both parties shall prepare, file, and serve a Form F8 Financial Statement by October 15, 2019;
3. The claimant shall pay a fine of \$500 to the respondent pursuant to s. 213 of the Family Law Act; and
4. The claimant shall pay to the respondent costs of \$1,000 payable forthwith and in any event of the cause. (the "Morellato Order").

- [331] Following the Morellato Order, Ms. Summers prepared and filed an updated Form F8 Financial Statement. Mr. Goodhew did not prepare and serve an updated list of documents, and did not prepare and file a Form F8 Financial Statement by the October 15, 2019 deadline. In addition, he did not pay the fine or costs awarded to Ms. Summers.
- [32] Ms. Summers scheduled a judicial case conference for November 19, 2019. Mr. Goodhew did not attend.
- [33] Ms. Summers, who was subject to accruing arrears of child support from FMEP, continued to try to seek resolution. The claimant's response was to send an email to the respondent on March 4, 2020 stating that she owed him \$433,824 in child support based on his assertion that she had been earning an annual income of \$350,000 since 2012. The email was aggressive and highly inappropriate. It stated, in part: The FMEP are going to put you so high on the radar, Ruth, you'll have to pre-clear domestic flights with them. They will take your licence, passport, retained earnings, assets, and estate when [you are] finally done. I won't have to do a thing and you'll pay and pay and pay and pay until it fucking hurts, bitch. Here is how I'm going to proceed you have 24 hours to produce a sincere and genuine settlement offer for \$433,824 otherwise, I will execute my stated intentions regarding an examination and discovery of you while demanding document disclosure. You are my top priority from now until payday . . . I'm coming for you.
- [34] Having again received no financial disclosure, Ms. Summers applied to adjourn the June 2020 trial. On June 3, 2020, Master Harper granted an adjournment on the following terms:
1. By July 15, 2020, the claimant is to comply with the Morellato Order;
 2. The claimant shall pay the respondent a fine of \$500 pursuant to ss. 213 and 230 of the Family Law Act, not payable forthwith; and
 3. The claimant shall pay the respondent her costs of the application in the fixed amount of \$1,000, not payable forthwith. (the "2020 Harper Order").
- [35] Mr. Goodhew did not comply with the 2020 Harper Order to produce the financial documents he was required to produce under the Morellato Order. He did not pay the fine or costs ordered.
- [36] The claimant lost his COBS Bread franchise in June 2020 through a forced purchase by the franchisor. He did not disclose to Ms. Summers any documents relevant to the sale until the first day of this trial.
- [37] On August 17, 2020, Ms. Summers applied for and was granted a protection order. The behaviour underlying the protection order was a physical altercation between Mr. Goodhew and his mother and brother, which the parties' daughter witnessed. As I understand it, the claimant was arrested but not taken into custody. The respondent applied for a protection order due to concerns for the safety and well-being of the children while in the claimant's care. The protection order was extended three times and expired on June 30, 2021.

- [38] Between August 2020 and February 2021, Joshua lived solely with Ms. Summers. Marley lived solely with Ms. Summers from August 2020 until June 2021.
- [39] A third ten-day trial date was scheduled to begin on September 27, 2021. Mr. Goodhew had not complied with the Morellato or the Harper Orders. Mr. Goodhew did not file a trial brief or attend the TMC that was scheduled on August 26, 2021. At the TMC, Master Harper made the following orders:
1. The claimant shall produce to the respondent documents setting out his income earning activities since 2016, personally or through an entity, within 14 days of receipt of a copy of the TMC order, such documents to include:
 - (a) The claimant's corporate tax returns and financial statements for the years 2016-2020;
 - (b) The claimant's T1 Tax Returns and Notices of Assessment for the years 2017-2020;
 - (c) The claimant's personal and corporate bank statements, credit card statements, investment statements, and debt statements for the years 2017-2020;
 2. The claimant shall file and deliver his trial brief within 14 days of receipt of the TMC order. (the "2021 TMC Order").
- [40] The claimant did not comply with the 2021 TMC Order.
- [41] Ms. Summers attempted to conduct an examination for discovery of the claimant in advance of trial. Ms. Summers served a notice of appointment setting the examination for discovery on September 10, 2021. The claimant did not attend.
- [42] There was evidence at trial that the respondent assumed the trial would not take ten days because she assumed that Mr. Goodhew, based on his recent non-appearances, would not attend trial. It appears the matter was set down for five days instead of the original ten.
- [43] On September 27, 2021, the parties' trial commenced before Justice Matthews. Justice Matthews' schedule only permitted four days of trial time. The claimant appeared and sought an adjournment. Ms. Summers took the position that the claimant's pleading should be struck given his non-compliance with disclosure orders. Justice Matthews declined to entertain either application without evidence and she directed the trial to proceed. The claimant applied for a mistrial, which was dismissed. The trial proceeded with the claimant's evidence in direct.
- [44] On the second day of trial on September 28, 2021, Ms. Summers applied for an adjournment. Counsel for Ms. Summers was concerned about her ability to respond to the claimant's wide-ranging allegations in his direct evidence given that Matthews J. had only four days available for trial. Justice Matthews granted the adjournment with conditions:
1. The trial is adjourned, to commence on January 31, 2022 for 10 days;
 2. The parties are to schedule a TMC at least 30 days in advance;

3. New trial briefs shall be delivered in the time provided for in the Supreme Court Family Rules;
 4. Examinations for discovery shall be conducted by November 30, 2021;
 5. The parties shall update their document production and disclosure by November 1, 2021;
 6. No party may rely on any document at an examination for discovery or trial unless that document has been produced to the other party before November 1, 2021, or unless the party came into possession of it after November 1, 2021, and receives leave of the Court to rely on the document.
 7. If the respondent seeks to bring an application to strike the claimant's claim, it must be brought by November 30, 2021; and
 8. The claimant must comply with any outstanding orders immediately. (the "Matthews Order").
- [45] The claimant did not comply with the Matthews Order. In particular, he did not comply with the outstanding production orders and he did not update his financial disclosure by November 1, 2021.
- [46] Mr. Goodhew was not represented by counsel at trial. Parties' Position The Claimant
- [47] Mr. Goodhew argues that Ms. Summers has continually and consistently violated court orders relating to child support and financial disclosure. He contends that the respondent violated the parties' Separation Agreement, and that she continues to do so today by failing to pay child support. Mr. Goodhew argues that Ms. Summers' failure to provide accurate and timely financial disclosure for a decade has prevented him from accurately ascertaining her true income for the purposes of child support.
- [48] Mr. Goodhew argues that since the parties' separation, Ms. Summers' behaviour has been combative and deceitful. Mr. Goodhew asserts that Ms. Summers has abused the court process in an attempt to avoid paying child support, which has led to a decade long campaign of harassment against him through the court system.
- [49] Mr. Goodhew argues that Ms. Summers rarely appeared when applications were being heard in court, she demanded adjournments, and falsely claimed he had not complied with financial disclosure. Mr. Goodhew further asserts that Ms. Summers hid the fact that she had an incorporated company in two provinces and waited until Justice Leask had retired before making numerous applications for financial disclosure. Mr. Goodhew argues that the respondent's income is more than double his income and yet she is attempting to have income imputed to him.

- [50] Mr. Goodhew argues that during the parties' legal conflict he and his current wife have taken primary responsibility in raising the parties' children. Mr. Goodhew asserts that while Ms. Summers refused to pay child support, she earned significant income and amassed pensions, savings, RRSPs, and real estate. Mr. Goodhew contends that Ms. Summers benefitted from his and his wife's willingness to care for the children at a moments' notice, while Ms. Summers advanced her career and earned significant compensation.
- [51] Mr. Goodhew states the parties have communication problems and he has been stonewalled by the respondent. He sought financial relief from the Court in 2012 which led to without prejudice orders. Justice Leask seized himself of their dispute. The parties were again before Justice Leask in 2012. They were to return within three months to resolve their issues. They never returned to Court and Ms. Summers simply quit making her payments. Mr. Goodhew argues that he was eventually forced to file his claim with FMEP.
- [52] Mr. Goodhew takes the position that up to the date of trial in 2018 he was cooperative and transparent with his financial disclosure. Mr. Goodhew testified that he completely disclosed his financial information, including abiding by the 2016 Consent Order, in the hopes of settling the issues or resolving them through a timely trial. He provided 3,000 pages to the respondent and filed his Form F8 Financial Statement in June 2017.
- [53] Mr. Goodhew admits that he has provided no disclosure since June 2017, except for a few documents entered into evidence at trial. He argues, forcefully, that the respondent also failed to provide full financial disclosure.
- [54] Mr. Goodhew explains that he failed to provide financial disclosure after 2017 because he was busy with his business and parenting. In addition, his wife was diagnosed with a brain tumour and he had more important priorities in his life. He acknowledges that he disengaged from the legal process after the 2018 trial was adjourned. The Respondent
- [55] Ms. Summers argues that the claimant has consistently and deliberately flouted court orders requiring him to make full financial disclosure. She contends that Mr. Goodhew stopped disclosing his financial information in 2017 following her analysis of his documents to ascertain his actual income for support purposes. Ms. Summers asserts that Mr. Goodhew's lack of financial disclosure has blocked her efforts to have the matter ready for trial.
- [56] Ms. Summers argues that Mr. Goodhew failed to produce financial documents for two reasons. First, he wanted to cause her financial and emotional harm. Second, he has been calculating in his actions. Ms. Summers asserts that Mr. Goodhew has led a campaign to delay and frustrate the court process because the resolution would involve him paying child support to her. Instead of disclosing his financial information and participating in the court process, in 2016 Mr. Goodhew filed the interim without prejudice Leask Order with the FMEP. Ms. Summers emphasizes that the filing of that Order resulted in FMEP arrears accruing against her dating back to 2012. Ms. Summers notes that these FMEP arrears have now reached over \$150,000. Ms. Summers argues that she does not have the luxury of disengaging from the legal process because child support arrears continue to accrue with

FMEP.

- [57] Ms. Summers asserts that she has been disadvantaged by Mr. Goodhew's refusal to provide financial disclosure. She seeks to impute income to him and has entered documents into evidence to establish that Mr. Goodhew has a much larger income than is evident in his Line 150 income.

Issues

- [58] I must determine the appropriate amount of child support and the apportionment of s. 7 expenses. This requires an analysis of both parties' incomes from 2012 to the date of trial. For much of this period, the parties shared parenting time of their two children. As a result, both parties' incomes are necessary to determine the set-off amount of child support that must be paid. Credibility Legal Principles
- [59] The assessment of a witness's credibility involves a consideration of the trustworthiness of the witness's testimony based on their sincerity and the accuracy of their evidence. Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296.
- [60] In *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, Justice Adair helpfully articulated a number of factors that affect the assessment of credibility. These factors include:
1. the witness's ability and opportunity to observe events;
 2. the firmness of the witness's memory;
 3. the witness's ability to resist the influence of interest to modify their recollection;
 4. whether the witness's evidence harmonizes with independent evidence that has been accepted;
 5. whether the witness changes their testimony during direct and cross-examination;
 6. whether the witness's testimony seems unreasonable, impossible, or unlikely;
 7. whether a witness has a motive to lie; and
 8. the demeanour of a witness generally.
- [61] As stated in the leading case *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 4 W.W.R. 171 (B.C.C.A.), the test of the truth of a witness's testimony is its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable" in the circumstances.

Analysis

- [62] Mr. Goodhew did not appear on the first day of this trial. He had phoned Scheduling the previous Friday to say he had contracted Covid-19. Scheduling advised him to appear by telephone on the first day of trial and apply for an adjournment. He did not appear by telephone on Monday, the first day of trial. Because he did not appear, I adjourned the trial until Wednesday morning. I sent a memorandum to Mr. Goodhew requesting that he attend trial on Wednesday, February 2, 2022. I advised him that if he was unable to come to Court due to Covid-19, he should attend by telephone at 10:00 a.m. to advise me of his condition. I advised him that I would expect him to have a PCR test to confirm his diagnosis. If so, we would discuss next steps in an attempt to have this matter proceed.
- [63] Mr. Goodhew called into Court on Wednesday morning to say he was too ill to attend the trial. He did not have any documentation to confirm his diagnosis. I adjourned the trial to the following day to allow Mr. Goodhew to provide me with sufficient medical documentation to confirm he had Covid-19. Mr. Goodhew called in the next morning and sent a positive rapid test result by email. However, I was unable to determine when the rapid test was taken and it did not have a name associated with it. In addition, when confronted with certain facts, Mr. Goodhew admitted that he had driven his son to the ferry the night before the first day of trial and had played hockey on the night before (Wednesday). Based on this information I was not satisfied that Mr. Goodhew was ill. At Ms. Summers' request, I ordered Mr. Goodhew to attend trial the next day. He did so and the trial commenced.
- [64] Mr. Goodhew participated in the trial without any evident health problems. Although he was courteous and respectful at trial, in my view Mr. Goodhew was not forthright with this Court about his ability to attend trial. Given this concern, I must approach Mr. Goodhew's testimony with caution. I must examine his evidence for its consistency with other evidence presented at trial. Mr. Goodhew's evidence must be tested against its harmony with other evidence, the preponderance of the probabilities, and with its reasonableness: Faryna.
- [65] I had no concerns with Ms. Summers' credibility. She gave her testimony in a consistent manner and made admissions where appropriate.
- [66] Both parties have some reliability issues given the amount of time the issue of child support has been outstanding. It is understandable that they do not remember details back to 2012, or back to 2007 when they signed their Separation Agreement. I take this into account when determining the issues before me. Lack of Financial Disclosure Legal Principles
- [67] The Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] require full disclosure from the parties in a family law dispute. Rule 5-1 applies to any party seeking to obtain or vary an order for child support. Rule 5-1(1)(g) requires a party who is self-employed to provide, for the three most recent years:

- (i) the financial statements of the person's business or professional practice, other than a partnership; (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the person does not deal at arm's length,
- [68] Rule 9-1 governs each party's obligation to list and produce documents. It requires the parties to prepare a list of documents that includes all documents that could be used by any party at trial to prove or disprove a material fact and which are or have been in the party's possession or control. The parties must also list any document they intend to refer to at trial.
- [69] Section 21(1) of the Guidelines outlines the disclosure requirements in child support matters. This section specifies that a spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order, must disclose the following:
1. a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;
 2. a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;
 3. where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;
 4. where the spouse is self-employed, for the three most recent taxation years
 - a) the financial statements of the spouse's business or professional practice, other than a partnership, and
 - b) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the spouse does not deal at arm's length;
 5. where the spouse is a partner in a partnership, confirmation of the spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
 6. where the spouse controls a corporation, for its three most recent taxation years
 - a) the financial statements of the corporation and its subsidiaries, and
 - b) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;

- [70] Section 21(2) of the Guidelines requires a person who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, to provide these same documents within 30 days.
- [71] Where a party to a family dispute fails to comply with financial disclosure obligations, the Family Law Act, S.B.C. 2011, c. 25 [FLA] and the Rules provide certain mechanisms to the court. Rule 5-1(28) provides that if a party fails to comply with a requirement to file a Form F8 Financial Statement or any applicable income document, the court may:
- (a) order that the Form F8 financial statement, applicable income document or particulars, as the case may be, be filed or served or both on terms the court considers appropriate;
 - (b) dismiss all or part of that party's claim or application;
 - (c) strike out all or part of that party's response to family claim or response to counterclaim;
 - (d) proceed under Rule 21-7 to punish the party for contempt of court;
 - (e) impose a fine under section 213(2)(d)(iii) of the Family Law Act;
 - (f) draw an adverse inference against the party;
 - (g) attribute income to that party in an amount the court considers appropriate;
 - (h) make an order as to costs.
- [72] Section 213(2) of the FLA further provides that if a person fails to comply with an order for disclosure or a requirement to disclose information under the Rules, the Court may do one or more of the following:
- (b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based on the inference;
 - (d) make an order requiring the person described in subsection (1) to pay
 - (i) a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution, (ii) an amount not exceeding \$5000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or (iii) a fine not exceeding \$5000;
 - (e) make any other order the court considers appropriate.
- [73] Numerous authorities have stressed the importance of accurate and timely financial disclosure in family law proceedings. There has been strong judicial commentary condemning non-disclosure. In *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 at para. 9, 1994 CanLII 3195 (S.C.), Justice Fraser called the non-disclosure of assets "the cancer of

matrimonial property litigation". He noted that non-disclosure "discourages settlement, increases the time and expense of litigation [and] has a tendency to deprive children of proper support": *Cunha* at para. 9. These statements by Fraser J. were cited with approval by the Supreme Court of Canada in *Leskun v. Leskun*, 2006 SCC 25 at para. 34. More recently, the Supreme Court of Canada reiterated that the "[f]ailure to disclose material [financial] information is the cancer of family law litigation": *Michel v. Graydon*, 2020 SCC 24 at para. 33.

[74] In *Wiebe v. Treissman*, 2017 BCSC 1523, Kent J. summarized the law on disclosure and the determination of a spouse's income in the context of a self-employed individual. He stated that:

[94] The burden of proving the reasonableness of deductions from business income, whether in the context of self-employment or within a wholly-owned corporation, lies with the spouse making the deduction. It is the obligation of that spouse to fully disclose the financial information and documentation relied upon to justify the deduction of each expense. It is not the other party's responsibility to hire, nor is it the court's obligation to appoint, an accountant or other professional to assess and challenge the reasonableness of the deduction, although of course both are at liberty to do so in appropriate circumstances. For a recent affirmation of these principles, see *Cunningham v. Seveny*, 2017 ABCA 4. [Emphasis in original.]

Analysis

The Claimant

[75] Parties have a statutory obligation to provide disclosure: FLA, s. 5(1). Mr. Goodhew has not provided any meaningful financial documentation since 2017 despite numerous court orders requiring him to provide proper disclosure.

[76] In my view, Mr. Goodhew has failed to provide accurate and timely financial disclosure. Mr. Goodhew has not provided personal tax returns from 2017 onward nor has he updated his list of documents since January 13, 2017. His last sworn Form F8 Financial Statement is from May 18, 2017.

[77] Mr. Goodhew also failed to disclose his business records. He has not produced corporate tax returns or financial statements relating to his business since 2015, apart from a few incomplete statements admitted at trial. Mr. Goodhew sold his COBS Bread franchise in June 2020, but has produced only one document relevant to the sale and it is incomplete. Up to the date of trial he provided no financial records to demonstrate his current employment or income.

- [78] There is no dispute that these documents were relevant. Mr. Goodhew was a business owner and was obliged to provide financial disclosure. Mr. Goodhew failed to produce adequate documentation to permit Ms. Summers to determine the impact of his company's profits on his Guidelines income.
- [79] Mr. Goodhew's explanation for his lack of financial disclosure was to argue that Ms. Summers breached multiple agreements and court orders and did not fully disclose her documents. This made it impossible for him to accurately determine her true income.
- [80] On the penultimate day of trial, after he had finished testifying, Mr. Goodhew included some of his own financial documents and put them to Ms. Summers. She could not identify or verify documents authored by him. These documents were produced too late in the day, were not properly introduced into evidence, and were hand selected by Mr. Goodhew. They did not make up for his lack of financial disclosure. Further, I would have expected Mr. Goodhew to bring this information before the Court in 2017 or 2018. He was given until November 1, 2021 to disclose his financial documents and he failed to do so. The penultimate day of trial, after his evidence had concluded, was simply too late to expect these documents to offer any assistance to this Court.
- [81] Despite my ruling that Mr. Goodhew was permitted to enter into evidence medical documentation regarding his wife's illness, he did not do so until the penultimate day of trial. It seems that he is also separated from his current wife although this was not confirmed at trial.
- [82] Mr. Goodhew argues that he disengaged from the litigation because he was busy with his new business and parenting his children. He had four children at home including a new daughter in 2013. In addition, Mr. Goodhew testified that because his wife was diagnosed with a brain tumour, he had more important priorities in his life.
- [83] I find that Mr. Goodhew's financial disclosure was woefully inadequate and I do not find his explanations to be sufficient. He is the one who reported Ms. Summers to FMEP. If he wanted to "disengage from the legal process" he should have taken steps to address the arrears she was accruing with FMEP. Instead, in March 2020 he sent the highly inappropriate email to Ms. Summers. From that email it is evident that Mr. Goodhew was well aware that arrears were accruing against Ms. Summers. At the same time, Mr. Goodhew frustrated any resolution of the matter by refusing to disclose financial information verifying his Guidelines income.
- [84] Mr. Goodhew has failed to comply with the document disclosure requirements in R. 5-1, R. 9-1, and the financial disclosure requirements outlined in the Guidelines. He has failed to comply with at least six court orders that compelled him to produce financial records. Those orders are:
- 1) the 2016 Consent Order;

- 2) The 2017 Kent Order;
- 3) The 2019 Morellato Order;
- 4) The 2020 Harper Order;
- 5) The 2021 TMC Order; and
- 6) The 2021 Matthews Order.

- [85] Mr. Goodhew repeatedly failed to abide by court orders in respect of this matter to facilitate a timely resolution of this child support dispute. Mr. Goodhew's non-disclosure has been the major impediment to addressing the issues of child support and s. 7 expenses and resolving the issues between the parties.
- [86] Mr. Goodhew failed to take his disclosure obligations seriously. The onus was on Mr. Goodhew to disclose his documents; his failure to do so is unacceptable. I find that Mr. Goodhew did not fulfill his obligations to make all reasonable efforts to obtain basic documents relating to his business. The Respondent
- [87] Mr. Goodhew testified that Ms. Summers is also not in compliance with her document production obligations and has also breached court orders.
- [88] Mr. Goodhew testified that he requested some financial documents from Ms. Summers that were never produced. However, in a letter dated May 3, 2019, counsel for Ms. Summers, Ms. Santerre, pointed out that Mr. Goodhew's letter, demanding documents from the respondent, contained "many allegations that are simply untrue". Nevertheless, Ms. Santerre invited Mr. Goodhew to attend at her office to review the documents if he believed documents were missing. He did not do so.
- [89] In addition, Ms. Santerre sent a follow-up letter to Mr. Goodhew specifically stating the documents were previously disclosed and that items he claimed were missing were contained in the respondent's list of documents. Ms. Santerre also reminded Mr. Goodhew that he had been invited to attend counsel's office to review Ms. Summers' documents.
- [90] I note that Mr. Goodhew made the same argument that Ms. Summers' disclosure was inadequate before Justice Horsman (as she then was) in 2021. Justice Horsman concluded that Mr. Goodhew's allegations were unfounded. As she stated in *Goodhew v. Summers*, 2021 BCSC 2373:
- [47] At the hearing before me, the Father repeated the allegations that he has made on past court appearances that the Mother is also not in compliance with her document production obligations and has breached court orders. He did not point to any evidence adduced on this application to support such an allegation. The Mother's list of documents, which is in evidence, includes her corporate and personal tax returns and notices of assessment, employment records, financial statements, business and personal bank account information dating back to 2011, RRSP statements, and credit card statements dating back to 2012. The

Mother updated her list of documents and provided an updated Form 8 Financial Statement as recently as August 2021. There is no evidence before me to show that the Father requested the Mother to produce additional records that he says are missing.

- [91] There is no evidence before me to show that Mr. Goodhew requested Ms. Summers produce additional financial records prior to trial. In any event, Mr. Goodhew had obligations to disclose his financial records regardless of whether Ms. Summers did the same.
- [92] Ms. Summers provided financial disclosure including her corporate and personal tax returns and notices of assessment, employment records, financial statements, and business and personal bank account information dating back to 2012. She also provided her RRSP statements and credit card statements dating back to 2012. She filed four Form F8 Financial Statements (April 12, 2012; April 28, 2017; October 15, 2019; and August 30, 2021). Ms. Summers provided her list of documents updated to September 30, 2019 and her personal and corporate income tax returns and notices of assessment to December 31, 2020.
- [93] Ms. Summers owned a property in Calgary that was disclosed on her 2019 list of documents. It is also listed on her latest Form F8 Financial Statement but it shows that she has sold the property. Ms. Summers testified that she purchased the property on behalf of her partner, Mr. Webster, so that she could sit on the condominium board for the property and exercise voting rights. She claims her partner reimbursed her for all the payments she made. In 2018, she transferred title to Mr. Webster in consideration of a sum of \$1.
- [94] Mr. Goodhew does not accept this explanation and argues that Ms. Summers hid this property from him. Mr. Goodhew also argues that Ms. Summers did not declare rental income for this property. I accept Ms. Summers' explanation that she was not hiding this property. She was a credible witness and the condominium was included on her list of documents as well as her F8 affidavit. However, this does not address the question of whether she should have claimed rental income from this property. I address this issue later in these Reasons.
- [95] I find that the respondent provided full financial disclosure. Her personal and corporate income tax returns and notices of assessment are current. Ms. Summers has provided financial disclosure and fulfilled her obligations. Determination of Guidelines Income Legal Principles
- [96] Parents are obligated by statute to provide for their children to the extent that they are capable of doing so: Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 26.1(2). Section 150(1) of the FLA provides that child support orders must be determined in accordance with the Guidelines.
- [97] It is well established that the most current information regarding a party's income should be used when calculating support: *Fuzi v. Fuzi*, [1999] B.C.J. No. 2263, 1999 CanLII 4073 (S.C.). For this reason, the Guidelines, the FLA, and the Rules all require parties to a family law dispute to make adequate financial disclosure and set out certain legal consequences for

when disclosure obligations are not met. In particular, R. 5-1(28) allows the court to draw an adverse inference or to impute income to a party who has failed to provide sufficient financial disclosure.

- [98] Where the court finds it difficult to determine a party's income due to that party's inadequate financial disclosure, the non-disclosing party must bear the consequences. As Justice Abrioux (as he then was) stated in *S.K.R. v. K.S.R.*, 2015 BCSC 914 at para. 55, it is not the court's role to "ferret out" the necessary information in the face of inadequate and confusing disclosure.
- [99] In *Vincent v. Vincent*, 2012 BCCA 186, the Court of Appeal outlined the steps to be taken when determining a party's Guidelines income:
- [35] All determinations of child support begin with finding the spouse's Line 150 income, a relatively straight-forward step one. The second step is to make whatever adjustments to that amount are required by Schedule III. Once these two steps are completed, the court must look to sections 17 to 20, to determine whether any of the exceptions set down in those provisions apply, and, if so, what effect they should be given on the facts of the case.
- [36] Section 17 gives the court discretion to deal with the problem of an income which fluctuates from year to year and with non-recurring income or losses such that the determination of a spouse's income under s. 16 is not the fairest determination of that income.
- [37] Section 18 provides discretion to deal with the situation where a spouse is in a position to manipulate income in their capacity as shareholder, director or officer of a corporation, such that a person's income under s. 16 does not fairly reflect all the money available to that spouse for the payment of child support. It permits the inclusion of pre-tax corporate income and benefits paid to non-arm's length persons.
- [38] Section 19 addresses situations where the spouse's disclosed income does not fairly reflect what should be paid in child support by permitting imputation of income. It permits the imputation of income in a variety of situations, including income which is tax exempt, under-utilized capital investments, and when there is a failure to provide income information.
- [100] It is clear that the court is not bound to accept a party's declared income for income tax purposes as the income on which to determine support obligations. A party's T1 statement may not be a true indication of their available income. The "task of the court is to determine what money is fairly available to support the children of the marriage": *Younger v. Younger*, 2017 BCSC 363 at para. 25. The Guidelines provide various mechanisms through which the court can determine a spouse's available income.
- [101] Where a party owns or controls a corporation, they can artificially reduce their income and, if they do so, their income should be adjusted: *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 121. Under s. 18 of the Guidelines, where a spouse is a shareholder, director, or officer of a corporation, and the court is of the opinion that the determination of the spouse's

annual income under s. 16 of the Guidelines does not fairly reflect all the money available to the spouse for the payment of child support, the court may determine the spouse's income to include all or part of the corporation's pre-tax income. It may also impute an amount commensurate with the services the spouse provides to the corporation.

- [102] Section 19 of the Guidelines permits the court to impute income to a spouse in circumstances where the court is of the opinion that the spouse's disclosed income does not reflect the income available to them for support purposes. Section 19 contains a list of circumstances in which it would be appropriate to impute income, but the list is not exhaustive: *Riel v. Holland* (2003), 67 O.R. (3d) 417, 232 D.L.R. (4th) 264 (C.A.) at para. 36. These circumstances include: where the spouse is intentionally unemployed or under-employed (s. 19(1)(a)); where the spouse has failed to disclose financial information (s. 19(1)(f)); and where the spouse unreasonably deducts expenses from income (s. 19(1)(g)).
- [103] Section 19(2) of the Guidelines requires the court to assess the reasonableness of corporate deductions to ensure a fair and reasonable determination of income. The court may treat deductions as income regardless of whether or not the Canada Revenue Agency has accepted the corporate expenses as deductions: *Dornik v. Dornik*, 1999 BCCA 627.
- [104] Under s. 19(1)(a) of the Guidelines, the court may impute income where a spouse is intentionally under-employed or unemployed. A spouse is intentionally under-employed where they choose to earn less than what they are capable of earning: *Drygala v. Pauli* (2002), 61 O.R. (3d) 711 at para. 28, 219 D.L.R. (4th) 319 (C.A.). A court does not need to conclude that a spouse is acting in bad faith or intentionally evading support obligations in order to impute income. Instead the court must determine whether a spouse is earning to their capacity: *C.P. v. K.W.A.*, 2018 BCSC 332 at para. 302; *Beissner v. Matheusik*, 2015 BCCA 308 at paras. 30, 44.
- [105] These statutory authorities allow the court to use all available evidence, including circumstantial evidence, to impute income to a non-disclosing party at an amount it considers appropriate. The court may do so even where there is little evidence from which to assess the party's income. This principle was set out by the Court of Appeal in *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453:
- [23] In the absence of complete income tax returns and other financial information of a spouse the court must look to other evidence, including circumstantial evidence, for the purpose of imputing income, *A.G. v. B.R.*, 2005 BCSC 96 at para. 57.
- [24] The judge relied on the little evidence available concerning the defendant's ability to obtain a mortgage and his shareholding in Lucky 9, to impute an income of \$75,000. She did not accept the explanation offered for the defendant's shareholding in Lucky 9 or for the basis on which he obtained a mortgage on his home.

- [25] There was some evidence to support that conclusion and the judge was permitted to draw an adverse inference against the defendant because of his inadequate disclosure. The defendant cannot be heard to dispute the level of income attributed to him, nor permitted to escape his support obligations because of his failure [to] adequately disclose income information. Parties' Positions The Respondent
- [106] Ms. Summers asks me to impute income to Mr. Goodhew under s. 19 of the Guidelines. Ms. Summers argues that Mr. Goodhew has claimed many personal expenses as business expenses and that his business is making profits that should be declared as income. She sets out her methodologies in her earlier November 25, 2016 affidavit which Mr. Goodhew had available to him well in advance of trial. Ms. Summers explained to the Court that her analysis was based on: i) Mr. Goodhew's spending (personal versus business expenses); ii) normalizing his financial statements and profit and loss statements; and iii) what was projected from his business plan.
- [107] In terms of expenses, Ms. Summers reviewed charges made to Mr. Goodhew's business Visa that appeared more personal in nature and added those to his personal spending. Non business-related expenditures ranged from a low of \$3,200 in 2012 to a high of \$25,000 in 2014 and included items such as the following:
1. Recreational activities (Planet Lazer/Lazer Tag, BC Amateur Hockey Association, Richmond Oval, Famous Players, University Golf, PNE, Vancouver Aquarium);
 2. Restaurant, grocery, and coffee charges (Starbucks, Herringer Meats, Superstore, Sushi Han, Bamboo Grove, BC Liquor Whistler);
 3. Retail charges (Rona, Home Depot, Dollarama, Loonie Town, Walmart, 7-Eleven, Prickly Pear Garden, Toys R Us);
 4. Personal charges (Clearly Contacts, massage, nail salons);
 5. Vehicle charges (gas stations, dealership-related expenses: Richmond Honda and Mercedes Benz); and
 6. Various airline and travel-related charges (Swiss Sunset Inn Penticton, Fairmont Whistler, Easy Boat Rentals).
- [108] Ms. Summers also calculated Mr. Goodhew's business profits by analyzing the profit and loss statements he provided for the years 2012 to 2015. Using this approach, Ms. Summers determined that the business generated cash profits of approximately \$119,000 in 2012, \$139,000 in 2013, \$160,000 in 2014, and \$163,000 in 2015. Ms. Summers based her analysis on COBS Bread's profitability when it was corporately run (the claimant had provided historical financial documents from 2006-2011), as well as information obtained from his general ledger statements and his 2012 business plan.

- [109] Page ten of Mr. Goodhew's business plan stated that franchise-managed stores have a higher operating profit than comparable corporate stores. The business plan further stated that Mr. Goodhew's COBS Bread posted an operating profit of \$75,000 based on sales of \$645,000, and that he was expecting an operating profit of \$208,000 in 2012 and \$228,000 in 2013. Yet, in every year since Mr. Goodhew assumed ownership, the business has posted a net operating loss. Ms. Summers argues that it did so even though the business generated significantly higher sales than when it was a corporate store.
- [110] Ms. Summers also analyzed Mr. Goodhew's income based on COBS Bread's revenues. Oral testimony and evidence provided by the claimant showed COBS Bread posting revenues of \$800,000 after it was established. The business plan states that on sales of \$700,000, operating profit would be \$133,000. Ms. Summers emphasized that page four of the business plan states that for every dollar received beyond \$640,000, 90% should go to operating profit.
- [111] Applying Ms. Summers' assumption that for every dollar received beyond \$640,000, 90% should go to operating profit, she contends that Mr. Goodhew's business had revenues of \$800,000. His business would have posted an operating profit of approximately \$220,000: (2011 operating profit of \$74,000) + (90% x (\$800,000-\$640,000)) = \$218,000.
- [112] Ms. Summers argues that although COBS Bread was achieving revenues of \$800,000, Mr. Goodhew wants the Court to believe that the business was barely making any money.
- [113] Ms. Summers also looked at the promotional material provided by COBS Bread. Ms. Summers noted that the promotional materials indicated that the top quartile of bakeries earned more than \$310,000 per year and that the average operating profit is \$250,000. The Claimant
- [114] Mr. Goodhew submits that his income from 2012 to 2020 ranged from a low of \$18,480 to a high of \$42,120. He submitted that no income should be imputed to him.
- [115] Mr. Goodhew took issue with Ms. Summers' calculations of his Guidelines income. Mr. Goodhew argues that the Court should not give any weight to Ms. Summers' calculations because she is not a certified accountant nor a financial expert qualified before this Court.
- [116] Mr. Goodhew took the position that his expenses related to legitimate business expenses such as taking staff out to lunch daily and buying small gifts as incentives. He also testified that he had significant debt that was not going down at the rate Ms. Summers contends.
- [117] Mr. Goodhew argues that Ms. Summers is in breach of her obligations under the 2012 Lease Order and the parties' Separation Agreement. Mr. Goodhew argues that Ms. Summers had an income of over \$200,000 and then quit her job, decreasing her income substantially (to approximately \$60,000), in an effort to avoid her child support obligations. Mr. Goodhew pointed out that he and Ms. Summers had an argument over his MSP bill. She would not contribute despite making a high income. He is still unable to pay the outstanding amount. Ms. Summers put a lien on his home because he had not paid his court ordered costs.

[118] Mr. Goodhew claims that it is Ms. Summers who has hidden her income and not provided proper financial disclosure. He argues that I should impute income to her.

Analysis

The Claimant

[119] Based on his lack of financial disclosure, I have no way of knowing Mr. Goodhew's income. This leaves me with no choice but to impute income to him.

[120] Mr. Goodhew was warned repeatedly about the risk of having income imputed to him. This risk was articulated to Mr. Goodhew by Justice Horsman, Justice Kent, and Master Harper. In her oral reasons for judgment on June 3, 2020, Master Harper was explicit about the consequences of not providing financial disclosure:

[6] [T]he only other remaining issue is with respect to a fine and costs, and it is clear that the claimant has not complied with the Morellato order. I want to say to you, Mr. Goodhew, that it is in your own personal interest to comply with the Morellato order because if your position is correct, that the respondent has historically made more income than you have, then you will be able to proceed to trial and demonstrate that she owes you a certain amount of money, as calculated by the two sets of Guideline incomes and the custody arrangements that are in place for the children.

[7] I want to impress upon you that the best way to think about your document disclosure requirements is not that they help the respondent's campaign against you, if that is the way you see it, but it helps you demonstrate to her and to the court what your actual income is over the years. It is not going to be effective for you, Mr. Goodhew, to go to trial and simply say to the trial judge my income is \$45,000, that is it. That is simply not going to get you anywhere, and it is going to be much more effective for you to look for your financial records and produce a list of documents that allows the respondent and her legal counsel to ascertain your Guideline income.

[9] So, the order will include a term the claimant will comply with the order of Madam Justice Morellato made August 30th, 2019 by July 15th, 2020. And I think, Mr. Goodhew, you need to understand that not complying with orders is not going to do you any good. It is going to be much better if you do and if you choose not to comply with orders, there are going to be financial consequences. [Emphasis added.]

[121] Despite these warnings and multiple court orders compelling financial disclosure, Mr. Goodhew failed to provide any financial documentation prior to trial.

[122] Mr. Goodhew claims the following as income: 2012 \$33,842 2013 \$33,049 2014 \$37,260 2015 \$42,120 2016 \$42,120 2017 \$42,120 2018 \$42,120 2019 \$42,120 2020 \$18,480 2021 \$21,000

[123] Mr. Goodhew argues that his expected Guidelines income in 2022 is \$42,120 based on averaging his T1 income over three years.

- [124] Mr. Goodhew was self-employed between 2012 and 2020. Support payments are based on earning capacity and not just on what a parent actually earns. The fact that Mr. Goodhew chose to take limited income from his business does not mean there is not more money available for child support purposes.
- [125] When a party is a director or shareholder of a company, the question is whether the income the parent receives as a salary fairly reflects all the money available to the parent for payment of child support. I must examine whether Mr. Goodhew unreasonably deducted personal expenses from business income. This may be fine for tax purposes, but it cannot be used as a way of avoiding child support payments.
- [126] Based on his non-disclosure, I find that Mr. Goodhew is trying to avoid paying child support: *Murphy v. Murphy*, 2000 BCSC 974 at para. 11.
- [127] Mr. Goodhew's refusal to follow court orders and produce his financial documentation has made the determination of set-off child support difficult. Nevertheless, Ms. Summers did her own calculations which she outlined at trial. Ms. Summers testified that she analyzed the claimant's income based on his spending and his company's financial records, as opposed to what he was declaring on his T1. Ms. Summers' analysis applied three different methodologies: (1) based on Mr. Goodhew's spending; (2) based on what was projected from his business plan; and (3) based on normalizing his financial statements and his profit and loss statements.
- [128] Based on her analysis, Ms. Summers believes Mr. Goodhew was earning much more than what he declared on his T4s. Ms. Summers believes Mr. Goodhew earned the following: 2012 \$114,500 (Line 150 income of \$33,842) 2013 \$137,500 (Line 150 income of \$36,099) 2014 \$182,500 (Line 150 income of \$36,099) 2015 \$150,000 (Line 150 income of \$37,260) 2016 \$200,000 (Line 150 income of \$42,000)
- [129] Ms. Summers argues it is likely that Mr. Goodhew's income only continued to increase as COBS Bread's revenues increased from the \$200,000 it showed in 2016 until his business was seized in 2020.
- [130] Apart from working part-time as a ski instructor, it is unclear what Mr. Goodhew has done to earn income since 2020. I had no evidence before me regarding his income after his business was seized.
- [131] Mr. Goodhew argues that Ms. Summers is not a certified accountant and she is not an expert before the Court. Moreover, Ms. Summers is not objective nor unbiased, and her analysis is based on her own feelings, speculation, and conjecture. There is some merit to these concerns. However, by failing to disclose his financial documents despite multiple warnings, Mr. Goodhew has left me with no way of determining his income. Given my concerns about credibility, I cannot simply accept what he told me at trial without some corroborating evidence.

- [132] Mr. Goodhew had a number of opportunities to respond to Ms. Summers' affidavit but chose not to.[1] As was stated in S.K.R., Mr. Goodhew must bear the consequences of his non-disclosure.
- [133] Mr. Goodhew testified regarding his expenses to try and justify his low income on his T4 statements. Mr. Goodhew testified that his expenses related to legitimate business expenses such as taking staff out to lunch daily and buying small gifts to act as incentives. While this may partially explain his expenses, it does not explain all of them. In addition, I find it difficult to believe that Mr. Goodhew would take his staff out to lunch daily, especially since he testified that he was very focused on reducing operating costs. Mr. Goodhew testified that his employee costs were high because minimum wage went up significantly in a few short years. He also had to purchase expensive equipment and he had other necessary expenses to run the business. I do not accept that he was taking one or more staff members out for daily lunches.
- [134] Mr. Goodhew testified that he took a lower salary because he was trying to build the business. Originally, he claimed \$35,000 as income and subsequently he claimed \$42,120 as his annual salary.
- [135] Mr. Goodhew also testified that his corporate debt increased due to a re-structuring of his RBC commercial loan debt. He stated that his monthly payments were onerous. Nevertheless, Mr. Goodhew testified that his business was doing well between 2012 and 2019.
- [136] In approximately 2019 or early 2020, Mr. Goodhew got into a fight with the franchisor. Mr. Goodhew testified that the franchisor ultimately seized his business for conduct unbecoming. This was during the pandemic, at a time when Mr. Goodhew's wife's health was deteriorating. The circumstances of the seizure are not relevant to this dispute, apart from the fact that Mr. Goodhew's income was involuntarily terminated in 2020.
- [137] Mr. Goodhew testified that at the time his business was seized his revenues from his business were over \$850,000. He claims his business sold in 2020 for just under \$380,000. He was unhappy because he believed the business was worth much more. While the franchisor may have sold his business at too low a price, it is clear on the little evidence I have before me that his business was doing well at the time it was seized.
- [138] Mr. Goodhew further noted that he had to pay a penalty to withdraw RRSPs after his business was sold. He testified that he was forced to draw down his RRSPs in 2022 to pay the living expenses for him and his four children. Mr. Goodhew put an RRSP statement into evidence which shows he withdrew half the amount.
- [139] Despite Mr. Goodhew's explanations, I do not have a complete picture of his financial situation. I have no way of knowing if he had other RRSPs or savings. I draw an adverse inference from the fact that he has not provided financial disclosure since 2018: R. 5-1(28); s. 213(2)(b) of the FLA; ss. 23 to 24 of the Guidelines. While I appreciate that Mr. Goodhew

"gave up" when the trial was adjourned in 2018, and I have sympathy with his frustration with the legal process, if he did not want to be involved in court proceedings he should have taken positive steps to advise FMEP and the Court that he was no longer pursuing the matter. I am now left to determine the issues with insufficient information.

- [140] I must impute income to Mr. Goodhew. However, he has provided me with few tools to determine an appropriate amount. By putting her analysis of Mr. Goodhew's financial statements before the Court, Ms. Summers has provided me with better tools to determine an appropriate amount of income to impute to Mr. Goodhew. Nevertheless, because Ms. Summers is an interested party and not an expert I must approach her analysis with caution. I view it as a helpful road map for me to consider when imputing income to Mr. Goodhew.
- [141] In terms of the actual income Mr. Goodhew had available for child support, I accept that Mr. Goodhew had more business expenses than Ms. Summers suggests. However, I also accept that he claimed a number of personal expenses through his business which need to be added back into his income. Where significant amounts of untaxed business income are used for payment of personal expenses, it is appropriate to "gross up" the business income to ensure Mr. Goodhew's real income is consistent with what it would have been had he been paid a straight salary.
- [142] I also accept that Mr. Goodhew needed to keep more money in the COBS Bread business than Ms. Summers acknowledges because he had a large debt which he was trying to pay off.
- [143] I give no weight to the promotional materials from COBS Bread as there was no expert evidence about whether these materials were accurate or were simply attempts to entice new franchisees.
- [144] Using Ms. Summers' analysis as the starting point, and based on the evidence at trial, I impute the following income to Mr. Goodhew: 2012 \$80,000 2013 \$80,000 2014 \$100,000 2015 \$100,000 2016 \$120,000 2017 \$120,000 2018 \$120,000 2019 \$120,000 2020 \$70,000 2021 \$70,000 2022 \$70,000
- [145] I find the income imputed between 2012 and 2019 to be consistent with Mr. Goodhew's lifestyle and it accounts for the personal expenses he was running through his business that should have been available for child support purposes: Guidelines, s. 19; Riel at paras. 35-36. This amount takes into consideration the fact that Mr. Goodhew had loans to pay off and another child to support. This amount acknowledges that the best calculations of Mr. Goodhew's income before me came from Ms. Summers, but also that she is a party adverse in interest.

- [146] I acknowledge that Mr. Goodhew lost his business in 2020. have imputed income to Mr. Goodhew of \$70,000 from 2020 going forward because I find he has the capacity to earn at least \$70,000: Beissner at paras. 30, 44. Mr. Goodhew did not provide any evidence as to why he cannot return to working in the technology sector now that he no longer owns COBS Bread. The Respondent
- [147] Mr. Goodhew argues that Ms. Summers chose to live a lifestyle that suited her, but did not provide for her children to the best of her abilities. I disagree.
- [148] Ms. Summers gave detailed testimony regarding how well she was compensated when she worked in the financial industry, but how difficult it was in terms of the hours and the environment in which she had to work. I accept Ms. Summers' decision to leave an industry with unsustainable hours and difficult working conditions. There is no indication she did so to avoid her child support obligations. In fact, the hours were partly difficult because they prevented her from spending time with her children. Ms. Summers was entitled to seek out a new career even if it was less lucrative than her employment in the financial industry.
- [149] Based on the documents before me, Ms. Summers' testimony, and my credibility findings, I accept the amount that Ms. Summers has declared as her Guidelines income with two exceptions.
- [150] First, Ms. Summers purchased a property in Calgary in January 2013 and sold it in March 2018 (the "Calgary Property"). Ms. Summers provided a detailed explanation of how she bought property on behalf of Mr. Webster. While I have no reason to disagree, Mr. Webster is her partner and this was not an arm's length transaction. Ms. Summers presumably benefited from this investment property. As a result, I must examine whether, through ownership of this property, constructive or otherwise, Ms. Summers was generating rental income during the time she owned the property, and the extent to which she benefited from the proceeds of the sale of this property.
- [151] Despite Ms. Summers' argument that she held the Calgary Property in trust for Mr. Webster, I find that Ms. Summers obtained a benefit from this property during the years in which she owned it. She was the sole owner of the property and testified that she used rental income to cover the mortgage payments and property taxes. In my view, although rental income that only covers the mortgage may not seem like income, it is a financial benefit that should be accounted for in Ms. Summers' Guidelines income. This Court has imputed a portion of rental income to a spouse in circumstances where a property was owned jointly by the spouse and his father: *Felts v. Silvestre*, 2021 BCSC 523. I find it appropriate to impute rental income in the circumstances here, where one spouse is receiving rental income for a property she claims to hold in trust for a non-arm's length party.
- [152] In terms of the quantum of imputed rental income, there is authority that the court may impute rental income in an amount based on the rental income disclosed on a spouse's tax return: *Bright v. Brown*, 2018 BCSC 560 at para. 16. However, in this case, Ms. Summers has not declared any rental income on her tax returns for the years 2013 to 2018. In the

circumstances, I find that an imputed rental income of \$10,000 per year in the years in which Ms. Summers owned the Calgary Property is appropriate. This amount of imputed rental income balances the fact that Ms. Summers may have held this property in trust for Mr. Webster while recognizing that she received a benefit from this property as the sole legal owner from 2013 to 2018.

- [153] Second, I find that Ms. Summers was under-employed in 2017 and 2018. She went from making a handsome income to claiming no income in 2017 and only \$8,437 in 2018. I do not find that Ms. Summers was intentionally avoiding her child support obligations. Nevertheless, she has an obligation to support her children at a level she is capable of earning: s. 147(1) of the FLA; Drygala at para. 28. In addition, like Mr. Goodhew, Ms. Summers' lifestyle is not consistent with her having access to no income during these two years. She lives with Mr. Webster and, based on the limited evidence before me, has a reasonably comfortable lifestyle.
- [154] I find that in 2017 and 2018 Ms. Summers was not earning to her capacity. I must impute income to her: Beissner at paras. 30, 44. Ms. Summers' subsequent income level, between 2019 and 2021, was approximately \$63,500. I find this is a reasonable amount to impute to Ms. Summers for the years 2017 and 2018.
- [155] I find Ms. Summers' Guidelines income to be the following: 2012 \$115,591 2013 \$90,309 2014 \$240,117 2015 \$281,477 2016 \$145,549 2017 \$73,500 2018 \$63,500 2019 \$68,051 2020 \$63,500 2021 \$63,500 2022 \$70,000
- [156] These numbers reflect the fact that Ms. Summers went on short-term disability in 2012 and later that year began working at Encana. It also reflects that Ms. Summers paid \$21,000 to Mr. Goodhew in July 2012 that was for the year 2011. Ms. Summers' 2014 income reflects her salary at Encana as well as \$41,000 in deferred shares from CIBC. The numbers also reflect her bonuses and the rental income I have imputed to her between 2013 and 2017.
- [157] I have not included capital gains from the sale of Ms. Summers' rental home in Calgary or the sale of Mr. Goodhew's business in 2020 as both were non-recurring: Plett v. Plett, 2009 BCSC 227 at paras. 23-25. In addition, I accept that Mr. Goodhew had to pay off business debts with the proceeds from his business. These sales were not a source of income for Ms. Summers or Mr. Goodhew.
- [158] In neither case was the selling of the asset in the nature of the business on which either party relied on for income. In neither case was their evidence that the sale increased their lifestyles: McNeil v. McNeil, 2013 NBCA 65; Dunnett v. Dunnett, 2018 BCCA 262, varied on reconsideration of a separate issue 2018 BCCA 292. Child Support Legal Principles

[159] Parents have a joint and ongoing legal obligation to support their children in a way that is commensurate to their income. Section 147(1) of the FLA states that "[e]ach parent and guardian of a child has a duty to provide support for the child" subject to the exceptions in s. 147(1)(a) and (b). Section 147 codifies the case law respecting when child support obligations end.

[160] Section 149 of the FLA allows the court to make an order requiring a child's parent to pay child support. In making an order for child support, s. 150 of the FLA provides that the court must use the Guidelines to determine the appropriate amount. The objectives of the Guidelines are set out in s. 1 of the Guidelines:

1. to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
2. to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
3. to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
4. to ensure consistent treatment of spouses and children who are in similar circumstances.

[161] Section 3(1) of the Guidelines provides that the amount of a child support order for a child will be the amount set out in the applicable Guidelines table based on the income of the payor spouse. Section 9 of the Guidelines further provides that where parenting time is shared equally, the amount of the child support order must be determined by taking into account:

- a) the amounts set out in the applicable tables for each of the spouses;
- b) the increased costs of shared parenting time arrangements; and
- c) the conditions, means, needs, and other circumstances of each spouse and of any child for whom support is sought.

[162] Retroactive child support orders will "commonly be appropriate where payor parents fail to disclose increases in their income": Michel at para. 32.

[163] In the recent case, *Colucci v. Colucci*, 2021 SCC 24, the Supreme Court of Canada outlined a new approach to retroactive variations in child support orders. The Court summarized this approach as follows:

[114] It is also helpful to summarize the principles which now apply to cases in which the recipient applies under s. 17 to retroactively increase child support:

- a) The recipient must meet the threshold of establishing a past material change in circumstances. While the onus is on the recipient to show a material increase in income, any failure by the payor to disclose relevant financial information allows the court to impute income, strike pleadings, draw adverse inferences, and award costs. There is no need for the recipient to make multiple court applications for disclosure before a court has these powers.
- b) Once a material change in circumstances is established, a presumption arises in favour of retroactively increasing child support to the date the recipient gave the payor effective notice of the request for an increase, up to three years before formal notice of the application to vary. In the increase context, because of informational asymmetry, effective notice requires only that the recipient broached the subject of an increase with the payor.
- c) Where no effective notice is given by the recipient parent, child support should generally be increased back to the date of formal notice.
- d) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The D.B.S. factors continue to guide this exercise of discretion, as described in Michel. If the payor has failed to disclose a material increase in income, that failure qualifies as blameworthy conduct and the date of retroactivity will generally be the date of the increase in income.
- e) Once the court has determined that support should be retroactively increased to a particular date, the increase must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.

Analysis

- [164] Neither party suggests that child support is inappropriate. However, both parties claim that the other party is avoiding their child support obligations. The parties have had conflict over this issue, and have had notice of this conflict, since 2012.
- [165] Given that the parties have largely shared parenting time, for the majority of the time there will be a set-off of the child support amounts. As such, both parties' incomes are relevant to the child support calculation.
- [166] As set out in Colucci, the first step of the test for a retroactive child support order is to determine whether there has been a material change in circumstances with respect to the payor's income. Here, both parties argue that the other has had a material change in their income. I have determined their incomes in the previous section of these Reasons.
- [167] Under the Leask Order Ms. Summers was to pay child support in the amount of \$1,000 per month. It was to be a temporary order until the parties reappeared before Justice Leask. When that appearance was adjourned, on December 18, 2012 the parties' counsel agreed in email correspondence to suspend the child support order until further agreement or court appearance. The parties signed the 2016 Consent Order whereby Ms. Summers' child support obligations were suspended for two months to allow the parties to exchange

financial information and come back to court.

- [168] Mr. Goodhew relies on the wording in the email exchange where the parties agreed that Ms. Summers would not pay child support until the matter was resolved or the parties were back in court. He argues that emails are not agreements or court orders. He also argues that his lawyer was clear that the suspension of child support payments by Ms. Summers was for a limited period. As he set out in his written submissions, there was an "active deadline for any suspension of child support payments of 90 days". As his counsel put it: "My client has agreed that Ms. Summers may stop paying child support until we are before the Court again, but I add the caveat that if that date is too far in the future there may need to be further discussions about that."
- [169] I disagree with Mr. Goodhew's contention that the wording in the email required Ms. Summers to resume child support payments at the end of 90 days. The parties, through their counsel, had an agreement that Ms. Summers did not have to pay the \$1,000 per month in child support until the parties were back before the court or otherwise agreed. If that took too long, there needed to be further discussions.
- [170] The next time the parties were in court after the agreement to suspend child support was an April 2013 appearance before Justice Leask. Nothing was resolved. Neither party took proactive steps to reschedule a court hearing to address child support. Ms. Summers testified that she assumed Mr. Goodhew was doing well with his business and was satisfied with each party covering child support expenses while the children were in their care. Due to their earlier agreement, Ms. Summers assumed that she did not need to pay child support until the matter could be resolved in court following proper financial disclosure by the parties.
- [171] Mr. Goodhew did not explain why he did nothing to assert his rights between 2012 and 2015.
- [172] The parties exchanged a series of emails from December 2015 to the spring of 2016. The outstanding financial issues were debated but the parties reached no consensus regarding how to address them. Mr. Goodhew admitted he got angry when he found Ms. Summers' responses to be unhelpful. As a result, in June 2016 Mr. Goodhew reported Ms. Summers to FMEP on the ground she was in breach of the Leask Order. FMEP took the position that Ms. Summers was in arrears of her child support obligations.
- [173] When Ms. Summers could not convince FMEP that she no longer needed to make child support payments, she retained legal counsel and filed an application in this Court. Prior to the court date, the parties signed the 2016 Consent Order which suspended child support payments for two months while the parties updated their financial information.
- [174] The next court appearance was before Kent J. on June 15, 2017. He suspended further enforcement of arrears by FMEP pending further order of the court. On an interim basis, he imputed an annual income of \$60,000 to each party for child support purposes. Since the parties had a shared parenting arrangement, this meant that there was no set-off child

support owing by either party. Both parties were ordered to disclose information about their corporate finances, including general ledgers, loans, and other financial documents. He ordered a ten-day trial for February 2018.[2]

- [175] Despite the Kent Order, FMEP assumed that Ms. Summers' earlier child support arrears continued to accrue at \$1,000 per month, plus interest. It appears that this is because the Kent Order did not expressly vary the Leask Order.
- [176] Mr. Goodhew's last financial disclosure before trial was in 2017. Ms. Summers took the position that his disclosure was insufficient and was granted an adjournment of the 2018 trial on this basis. Mr. Goodhew disputes Ms. Summers' assertion that his disclosure was not up to date in early 2018 and argues that Ms. Summers was granted this adjournment on false pretenses. There was not enough evidence before me to address this issue. I do not even have the 2018 order adjourning the trial before me.
- [177] It was after the adjournment of the trial in 2018 that Mr. Goodhew says he disengaged from the litigation process because he had better things on which to spend his time. His priorities had changed. He also did not believe the parties would ever get to trial and he was worn out by all the interim applications.
- [178] I accept Ms. Summers' evidence that it was impossible for her to disengage from the legal process because Mr. Goodhew had registered the Leask Order with FMEP. Consequently, \$1,000 per month continued to accrue as debts payable by Ms. Summers for child support.
- [179] In my view, if Mr. Goodhew had better things to do than be concerned about child support, he should have taken steps to advise FMEP that he was no longer pursuing child support. Instead, he allowed FMEP to continue to assume that Ms. Summers was simply ignoring a court order to pay child support.
- [180] Between 2012 and August 17, 2020, the parties had a shared parenting arrangement. Although Ms. Summers had to occasionally request changes to the schedule, sometimes at the last minute, Mr. Goodhew admitted at trial that she cared for the children at least 40 percent of the time.
- [181] A protection order was granted on August 17, 2020, based on Ms. Summers' concerns for the safety and wellbeing of the children while in Mr. Goodhew's care. The protection order was extended three times and expired on June 30, 2021. This is significant because since the August 2020 protection order, the children have largely resided more than 60 percent of the time with Ms. Summers. Mr. Goodhew did not pay any child support during this period. Ms. Summers raised no concerns about the safety of the children when in Mr. Goodhew's care going forward.
- [182] Based on my determination of the parties' Guidelines incomes, the set-off amount of child support between 2012 and 2019 is:
- | | Year | Ms. Summers' Guidelines income | Mr. Goodhew's Guidelines income | Payable by Ms. Summers | Payable by Mr. Goodhew | Set-Off Amount |
|------|-----------|--------------------------------|---------------------------------|------------------------|--------------------------------------|------------------------|
| 2012 | \$115,591 | \$80,000 | \$1,678 | \$1,209 | \$469/month (payable to Mr. Goodhew) | (x12 months = \$5,628) |

2013 \$90,309 \$80,000 \$1,349 \$1,209 \$140/month (payable to Mr. Goodhew) (x12 months = \$1,680) 2014 \$240,117 \$100,000 \$3,239 \$1,478 \$1,761/month (payable to Mr. Goodhew) (x12 months = \$21,132) 2015 \$281,477 \$100,000 \$3,761 \$1,478 \$2,283/month (payable to Mr. Goodhew) (x12 months = \$27,396) 2016 \$145,549 \$120,000 \$2,050 \$1,734 \$316/month (payable to Mr. Goodhew) (x12 months = \$3,792) 2017 \$73,500 \$120,000 \$1,141 \$1,781 \$640/month (payable to Ms. Summers) (x12 months = \$7,680) 2018 \$63,500 \$120,000 \$986 \$1,781 \$795/month (Payable to Ms. Summers) (x12 months = \$9,540) 2019 \$68,051 \$120,000 \$1,056 \$1,781 \$725/month (Payable to Ms. Summers) (x12 months = \$8,700) TOTAL: Total Payable to Mr. Goodhew: \$59,628 Total Payable to Ms. Summers: \$25,920 Set-Off Amount: \$33,708 (\$59,628 - \$25,920)

- [183] Ms. Summers paid \$13,764 in child support to Mr. Goodhew in 2012. As such, she owes him \$19,944 (\$33,708 - \$13,764) in retroactive child support for the years 2012 to 2019.
- [184] In August 2020, both children began living full-time with Ms. Summers. In February 2021, Joshua began to live full-time with Mr. Goodhew. Marley continued to live with Ms. Summers full-time until June 2021 at which time she went back to a week on/week off schedule. Mr. Goodhew owes Ms. Summers \$11,462 in retroactive child support for this period of time: Time Period Payable by Ms. Summers Payable by Mr. Goodhew Child support amount January 2020 to July 2020 (Shared Parenting) \$986 \$1,086 \$100 per month (payable to Ms. Summers) (x7 months) = \$700 August 2020 to December 2020 (Both children living with Ms. Summers) \$0 \$1,086 \$1,086 per month (payable to Ms. Summers) (x5 months) = \$5,430 January 2021 to February 2021 (Both children living with Ms. Summers) \$0 \$1,086 \$1,086 per month (payable to Ms. Summers) (x2 months) = \$2,172 March 2021 to June 2021 (Marley living with Ms. Summers. Joshua living with Mr. Goodhew) \$602 \$666 \$64 per month (payable to Ms. Summers) (x4 months) = \$256 July 2021 to December 2021 (Shared parenting of Marley. Josh living with Ms. Summers.) \$602 \$1,086 \$484 per month (payable to Ms. Summers) (x6 months) = \$2,904 TOTAL: Total Payable to Ms. Summers: \$11,462
- [185] In January 2022, Josh began college full-time in Victoria. The parties have shared parenting of Marley equally on a week-on/week-off or two-week on/two-week off schedule since June 2021.
- [186] Going forward, based on the parties' shared parenting arrangement and their Guidelines incomes as determined above, the set-off amount of child support for Marley is \$NIL. If Marley begins to live primarily with one parent in the future, the parties are to adjust child support based on their Guidelines incomes. I address support for Joshua under s. 7 expenses.
- [187] Commencing in 2023, the parties will exchange financial information, including notices of assessment, business records, and corporate financial statements no later than May 31 of each year. The amount of child support payable is to be adjusted annually based on the parties' incomes. If either party fails to disclose their financial information the other party can make an application in court. Section 7 Expenses Legal Principles

- [188] I need not set out the legal principles regarding s. 7 expenses in detail because neither party disputes they should be paid. Their disagreement revolves around their incomes, what are appropriate expenses, and whether Mr. Goodhew agreed to an expense before it was incurred.
- [189] In *L.A.M. v. S.C.M.*, 2020 BCSC 67 at para. 29, Justice Weatherill laid out a two-pronged approach to assessing whether an expense ought to be considered a s. 7 expense:
- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
 - i. the combined income of the parties; ii. the nature and amount of the individual expense; iii. the nature and number of the activities; iv. any special needs or talents of the children;
 - v. the overall cost of the activities; and vi. any other similar factor that the court considers relevant.
 - b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
 - i. the means of the spouses and those of the child; and ii. the family spending pattern prior to separation.
- [190] Overall, for an expense to be considered a s. 7 expense it must meet the threshold of being necessary, reasonable, and affordable. The court must consider if the recipient of child support can reasonably cover the expense out of their income, including from the child support they receive. If so, the expense will usually not be considered an extraordinary expense: *L.A.M.* at para. 30.

Analysis

- [191] The parties have settled s. 7 expenses up to the end of 2011.
- [192] Between 2011 and 2014 Ms. Summers corresponded by email directly with Mr. Goodhew's wife, Shashi Goodhew, regarding the children's school expenses, medical and dental expenses, and extracurricular activities. Ms. Summers and Ms. Goodhew made adjustments to the expenses as necessary. They then shared the remaining costs on a 50/50 basis.
- [193] I find the following expenses qualify as s. 7 expenses:
- a) health and dental expenses;
 - b) orthodontic expenses;
 - c) vision expenses;
 - d) extracurricular activities (e.g., softball expenses, volleyball expenses);

- e) counselling;
- f) reasonable college expenses; and
- g) school-related fees.

[194] I do not accept that driving lessons are a s. 7 expense as I did not hear any evidence on that issue.

[195] Based on the parties' Guidelines incomes as determined above, the parties' respective proportions for past s. 7 expenses back to 2014 are as follows: Year Ms. Summers' Proportion Mr. Goodhew's Proportion 2014 71% 29% 2015 74% 26% 2016 55% 45% 2017 38% 62% 2018 35% 65% 2019 36% 64% 2020 48% 52% 2021 48% 52% 2022 50% 50%

[196] Ms. Summers provided a summary of the s. 7 expenses she has incurred on behalf of the children since 2014. Mr. Goodhew took the position that he did not agree in advance to many of the s. 7 expenses. However, apart from the tuition for the private school Joshua attended, Mr. Goodhew did not specify to which of the expenses he disagreed.

[197] Ms. Summers submits that she incurred the following s. 7 expenses for the children from 2014 to the date of trial: Year Amount 2014 \$2,288 2015 \$423 2016 \$24,054 (\$19,910 of which was Joshua's tuition to Eaton-Arrowsmith School) 2017 \$0 2018 \$214 2019 \$0 2020 \$4,397 (minus \$461 in driving school fees = \$3,936) 2021 \$4,488 (minus \$315 in driving school fees = \$4,173) 2022 \$4,128 (minus \$326 in driving school fees = \$3,802)

[198] Ms. Summers adduced invoices for all these s. 7 expenses. I am satisfied these expenses are valid s. 7 expenses and are reasonable.

[199] Mr. Goodhew submitted that from 2014 to 2022 he incurred s. 7 expenses in the amount of \$500 per year for each of the children. Thus, he seeks \$1,000 per year in retroactive s. 7 expenses for the children. While Mr. Goodhew has not adduced invoices for these retroactive expenses, s. 7 of the Guidelines provides that s. 7 expenses may be estimated.

[200] I am satisfied that Mr. Goodhew's estimates are reasonable. The parties shall share the \$1,000 per year in s. 7 expenses from 2014 to 2022 in proportion to their incomes in those years as set out in the table above. Mr. Goodhew's \$1,000 per year in s. 7 expenses should be subtracted from the gross s. 7 expenses incurred by Ms. Summers and then the parties should pay the set-off amount in proportion to their incomes in the year at issue as set out in the table above.

[201] Mr. Goodhew sought to include his MSP bill as a retroactive s. 7 expense. However, on the limited evidence before me I cannot determine whether the bill is simply for the two children of the marriage or whether it also includes charges for Mr. Goodhew, his current wife, or his other children. As a result, I decline to include this MSP bill as a retroactive s. 7 expense.

- [202] The main expense about which the parties do not agree is the tuition for Eaton-Arrowsmith School which Joshua attended for one semester when he was in grade seven. Mr. Goodhew vehemently denied that he agreed that Joshua could attend this school. He points to the Kent Order that says that s. 7 expenses must be agreed upon before they are incurred.
- [203] Mr. Goodhew's position is inconsistent with the evidence before this Court. The evidence before me was that the parties agreed to have a psychologist prepare a Psycho-Educational Report for Joshua. The report, and the psychologist's assessment of Joshua's learning disabilities outlined in the Canada Revenue Agency Disability Tax Credit Form, suggest that Joshua had a learning disability that warranted academic support. The parties agreed with the psychologist's recommendation that Joshua attend a smaller private school such as Eaton-Arrowsmith where he might receive additional support.
- [204] I order that the parties share the retroactive s. 7 expenses adduced by Ms. Summers, including the cost of the Eaton-Arrowsmith tuition in 2016, in proportion to their incomes in those years as set out by the table above.
- [205] Going forward, the parties are to share s. 7 expenses in proportion to their incomes. The expenses should be exchanged, with receipts, every three months.
- [206] Since January 2022, Joshua has been attending college. He is therefore still a child of the marriage for support purposes. Ms. Summers seeks an order that the claimant contribute to Joshua's college expenses. Joshua began attending Camosun College in January 2022 and currently resides in Victoria with Ms. Summers' parents. Ms. Summers seeks an order that each party pay \$250 per month to her parents to assist with food and board for Joshua.
- [207] It is reasonable that the parties, collectively, pay Ms. Summers' parents \$500 per month for room and board for Joshua. Joshua's college expenses, tuition, and books are s. 7 expenses. Miscellaneous
- [208] Mr. Goodhew argues that certain items were erroneously included in the parties' Separation Agreement. He seemed to be challenging its very foundation. Not only did Mr. Goodhew sign the Separation Agreement, there is nothing in the pleadings to suggest that the validity of the Separation Agreement is an issue before me. Based on the evidence, I agree Ms. Summers did not comply with several relatively minor provisions in the Separation Agreement. However, it would be inappropriate for me to consider the validity of the Separation Agreement.
- [209] Mr. Goodhew seeks an order under s. 221 of the FLA that Ms. Summers be prohibited from making further applications without leave of the court and that she be fined \$5,000 for misusing the court process.
- [210] I have not found that Ms. Summers misused the court process and so I decline to make such an order.

[211] Mr. Goodhew also seeks an order that Ms. Summers remove all liens and encumbrances filed against him. Since Mr. Goodhew has failed to pay outstanding costs and fines, I decline to make such an order.

Disposition

[212] For the reasons given above, I make the following orders:

1. Income:

a) I impute the following Guidelines income to Mr. Goodhew:

- i. 2012: \$80,000 ii. 2013: \$80,000 iii. 2014: \$100,000 iv. 2015: \$100,000
- v. 2016: \$120,000 vi. 2017: \$120,000 vii. 2018: \$120,000 viii. 2019: \$120,000 ix. 2020: \$70,000
- x. 2021: \$70,000 xi. 2022: \$70,000

b) I impute \$10,000 per year in rental income from 2013-2018 and income for under-employment for 2017 and 2018 to Ms. Summers, such that her Guidelines income is as follows:

- i. 2012: \$115,591 ii. 2013: \$90,309 iii. 2014: \$240,117 iv. 2015: \$281,477
- v. 2016: \$145,549 vi. 2017: \$73,500 vii. 2018: \$63,500 viii. 2019: \$68,051 ix. 2020: \$63,500
- x. 2021: \$63,500 xi. 2022: \$70,000

2. Child Support:

a) I cancel the FMEP arrears and set aside the previous orders that address child support.

b) Ms. Summers shall pay retroactive child support to Mr. Goodhew for the years 2012 to 2019 in the amount of \$19,944.

c) Mr. Goodhew shall pay retroactive child support to Ms. Summers for the period of January 2020 to December 2021 in the amount of \$11,462.

d) Going forward, based on the parties' shared parenting schedule, the set-off amount of child support for Marley is \$NIL. If Marley begins to live primarily with one parent in the future, the parties are to adjust child support based on their Guidelines incomes.

e) Going forward, so long as Joshua is living with Ms. Summers' parents in order to attend college the parties shall each pay \$250 per month to Ms. Summers' parents to assist with food and board for Joshua in Victoria.

- f) Commencing in 2023, the parties will exchange financial information, including notices of assessment, business records, and corporate financial statements no later than May 31 of each year. The amount of child support payable is to be adjusted annually based on the parties' incomes. If either party fails to disclose their financial information the other party can make an application in court.
3. Section 7 Expenses:
- a) I order that the following expenses are s. 7 expenses:
- i. health and dental expenses; ii. orthodontic expenses; iii. vision expenses; iv. extracurricular activities (e.g., softball expenses, volleyball expenses);
 - v. counselling; vi. reasonable college expenses; and vii. school-related fees.
- b) Joshua's college expenses, tuition, and books are s. 7 expenses.
- c) The parties shall share the s. 7 expenses from 2014 to 2022, including Joshua's Eaton-Arrowsmith School tuition and Mr. Goodhew's estimated \$1,000 per year in proportion to their incomes in those years as set out in these Reasons.
- d) Going forward, the parties shall share s. 7 expenses in proportion to their incomes.
- [213] The parties may return to this Court to clarify any aspect of this order. I will remain seized of the matter for any clarifications. Costs
- [214] Mr. Goodhew submits that he made an offer to settle to Ms. Summers and requests that the Court not address the issue of costs until the substantive issues of support and income have been decided. I agree to address costs after these Reasons for Judgment have been issued.
- [215] Should the parties wish to make submissions on costs, they may arrange to do so with Supreme Court Scheduling. Any such arrangements must be made within 45 days of the date of these Reasons for Judgment. "D. MacDonald J."
- [1] In two applications made before Master Tokarek on June 11, 2019 and before Master Cameron on November 27, 2020, the claimant was granted adjournments at his request to provide him more time to prepare his response materials. The claimant failed to provide the response materials.
- [2] For reasons already explained, there was no trial until the parties appeared before me in 2022.

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