

CANADA / JUDGMENT

Grisenthwaite v. Clavora

2023 BCSC 1864

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1864 Grisenthwaite v. Clavora

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grisenthwaite v. Clavora,

2023 BCSC 1864

Date: 20231024

Docket: E220769

Registry: Victoria

Between:

Jason Richard Grisenthwaite

Claimant

And

Alyx Patricia Clavora

Respondent

Before: The Honourable Justice Giaschi

Reasons for Judgment

The Claimant, appearing in person:

J. Grisenthwaite

Counsel for the Respondent:

E. Neary

Place and Dates of Trial:

Victoria, B.C.

April 17-21, 2023

Place and Date of Judgment:

Victoria, B.C.

October 24, 2023

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Introduction

- [1] The parties commenced living in a marriage-like relationship in 2014, were married on May 4, 2019, and separated on November 28, 2021. The claimant was 51 years of age as of the date of the trial, and the respondent was 33. There is one child of the marriage, Georgia, who was one year old as of the date of the trial.
- [2] Both parties request a divorce.
- [3] The claimant seeks shared parental decision-making responsibilities, a gradual increase in his parenting time such that he eventually has equal parenting time with the child of the marriage, and division of family property and debt, including an exclusion for the family home that he owned prior to the relationship. He agrees to payment of child support based on his income as disclosed in his 2021 tax return but does not agree to spousal support.
- [4] The respondent seeks sole decision-making authority with respect to the child of the marriage, and an order that the claimant's parenting time be limited and supervised. She also seeks payment of child support arrears, an order imputing income to the claimant, prospective child support, retroactive and prospective spousal support, and division of family property and family debt. The respondent submits the full value of the family home should be included in the property division since, inter alia, the claimant has not proven the value of the exclusion.

Witnesses and Credibility

- [5] The claimant called only himself as a witness at the trial. On behalf of the respondent, there were several witnesses, namely: the respondent, the respondent's mother, Irene Clavora; the respondent's sister, Lauren McNeil; and Andrew Kempton, a mortgage broker.
- [6] Before addressing the facts, I state at the outset that I find the evidence of the claimant is neither credible nor reliable. I generally prefer the evidence of the respondent over that of the claimant. My reasons for finding the claimant to not be a credible or reliable witness include:
 - a) The claimant gave very brief evidence which was presented in a disjointed manner. He provided minimal supporting documents and failed to provide relevant details;
 - b) The claimant was extremely argumentative and belligerent in cross-examination. He failed to answer questions directly and often failed to answer questions at all or only after being directed by the Court to answer;
 - c) The claimant testified to being the victim of various frauds. Specifically, he testified the family home was fraudulently transferred from his name into the sole name of the respondent. He similarly testified to a fraud involving a Sooke property which resulted in his interest being depleted. He testified that the respondent, lawyers, mortgage brokers, and the respondent's parents were all involved in these frauds. However, his testimony of these

frauds lacked detail and amounted to conclusory statements unsupported by any real evidence; and

- d) Despite having pleaded that he is the biological father of Georgia, the claimant raised paternity as an issue in January 2023 and alleged, at the commencement of the trial, that he is not her biological father. In fact, in his opening he said that 80 percent of this case was about paternity. He provided absolutely no evidence justifying his belief that he was not Georgia's father. On the fourth day of the trial, a paternity test was put in evidence showing conclusively that he is the biological parent of Georgia.
- [7] In addition to the above, the claimant has failed to comply with his disclosure obligations under the Supreme Court Family Rules and has failed to comply with numerous court orders concerning disclosure. In particular,
- a) he failed to produce a list of documents until January 17, 2023, and the list provided was deficient;
 - b) he failed to comply with a disclosure order made at a judicial case conference on April 25, 2022;
 - c) he failed to comply with disclosure deadlines set at a trial management conference on December 8, 2022;
 - d) he failed to comply with an order made on January 18, 2023; and
 - e) he failed to comply with an order made at a trial management conference on March 2, 2023, that he was to provide meaningful responses to document requests and an updated list of documents by March 6, 2023.
- [8] In contrast to the evidence of the claimant, the respondent gave her evidence in a clear, concise, cogent, and straightforward manner. Her evidence was detailed, and is, for the most part, corroborated by the documents. Her evidence was not undermined in cross-examination.

Facts

Pre-Separation Events

- [9] The parties met in 2013, began dating in 2014, and moved in together in November 2014. The claimant testified that the respondent was simply a roommate at this time and paid rent until 2017. The respondent testified that she contributed \$650 per month but did not testify that it was rent. Rather, she testified that the money she paid was used to pay an existing family maintenance obligation the claimant had. In cross-examination, the claimant agreed that this was the case. Regardless of what the money contributed by the respondent was used for, I find as a fact that they were living in a marriage-like relationship as of November 2014. Both parties pleaded they began living in a marriage-like relationship in 2014.

- [10] At the time the parties began living together, the claimant was having financial difficulties. He apparently owed money to Canada Revenue Agency ("CRA") and had declared bankruptcy. It was not clear on the evidence exactly how the bankruptcy resolved. In any event when the parties commenced living together, the claimant operated a drywall business named Quality Victoria Drywall, through a corporation, 0902619 B.C. Ltd. ("QVD").
- [11] Also, at the time the parties began living together, the respondent had either just commenced, or was about to commence, her career in nursing. She worked as a nurse throughout the relationship, although in October 2021, she went on maternity leave. She remained on maternity leave until December 5, 2022, when she re-commenced working part time as a nurse. In early April 2023, she returned to full-time employment as a nurse.
- [12] The parties commenced living together at 2795 Kingswood Road, Victoria (the "Family Home"). It is undisputed that this property was owned by the claimant prior to the parties living together. Regrettably, the claimant provided no documentary evidence of the value of the Family Home in 2014 or at any other time. When asked by the Court of its value in 2014, he responded it had been valued by a realtor at \$750,000 in 2017 and that he guessed it was worth \$100,000 less in 2014. He also guessed the amount owing on the mortgage in 2014 was \$450,000. I observe that the claimant's evidence of the valuation of an unnamed realtor is inadmissible hearsay, and I give it no weight.
- [13] On May 28, 2018, the title to the Family Home was transferred from the claimant to both the claimant and the respondent as joint tenants. The respondent explained that this was done because the mortgage on the home was up for renewal and they had been advised that if she went on title, they could obtain a more favourable mortgage rate because she had a good credit rating whereas the claimant, because of his bankruptcy, did not. Although the title transfer was registered with Land Titles Office, the claimant inexplicably refused to acknowledge that the transfer in title occurred. He did, however, acknowledge that the mortgage was up for renewal, and that he and the respondent discussed putting her on title so they could obtain a more favourable mortgage rate. I find as a fact that the title to the Family Home was transferred to the parties jointly, so that they could obtain a more favourable mortgage rate.
- [14] In September 2018, the parties became engaged. They married on May 4, 2019. They commenced trying to have a child but experienced difficulties and sought the advice and assistance of a fertility clinic.

The Pandemic

- [15] The respondent testified that things were fine in the relationship until the onset of the Covid-19 pandemic. She said that their respective views were not aligned in that the claimant thought it was a conspiracy, did not want to get vaccinated, and did want her to get vaccinated. She testified that he also held other conspiracy views, including, that the world was being run by sex traffickers and pedophiles, that JFK was still alive and would save the

world, that the Royal Family were body doubles, and that the Covid vaccine would kill people. She testified that eventually, this caused disagreements between them, and between the claimant and her family.

- [16] The claimant did not refute the respondent's evidence of his belief in conspiracy theories and of his views regarding the Covid-19 vaccine. In fact, in cross-examination he agreed that he questioned the Covid pandemic and that they had very different views about the vaccine.

The Sooke Property

- [17] In or about February 2021, a lot at 4028 Clarkson Road, Sooke (the "Sooke property") was purchased with the intention of building a house and selling the completed house. The claimant testified that a fraud was committed in relation to this project. His evidence was not clear or coherent, but he suggested that the fraud involved a mortgage broker, a realtor, the respondent, and the respondent's parents. He testified that the respondent's parents were not supposed to have been owners but somehow became 50% owners. He complained that the house was sold for far less than it ought to have been and said he had not received a proper accounting.
- [18] The respondent explained that in January 2021, the claimant approached her with the idea of building a "spec" house and, as they did not have the funds to finance such a venture, he asked her to approach her parents to see if they would assist. She testified that she approached her parents and they agreed to join in the project, but as participants rather than lenders.
- [19] The Sooke property was the subject of a petition proceeding (Victoria Registry Docket S220874) brought by the respondent's parents. On August 18, 2022, Justice Power ordered that the property be sold for \$1,168,000 plus GST and ordered how the sales proceeds were to be distributed, including in excess of \$650,000 to the respondent's parents. By further consent order made October 7, 2022, the respondent's parents received an additional \$78,653.45, the respondent received \$39,416.92, and the claimant received \$29,236.50. The reason the claimant received less than the respondent is because he was required to pay the costs of the petition and those costs were paid out of his share.

April 2021 Re-financing and Transfer of Family Home

- [20] On April 28, 2021, the title to the Family Home was transferred into the sole name of the respondent. The respondent testified that this occurred because the mortgage on the Family Home again came up for renewal and they were advised they could get a better renewal rate if title to the home was in her name alone. She testified that they attended before a lawyer who prepared a document entitled "Co-Ownership Agreement" which provided that, notwithstanding she would be the sole person on title, each party would have a 50% beneficial interest in the Family Home. The Co-Ownership Agreement was signed on April 23, 2021. Title to the Family Home was transferred into the sole name of the respondent on

April 28, 2021.

- [21] Andrew Kempton, a mortgage broker, testified on behalf of the respondent. He testified that he was contacted by the claimant in relation to refinancing the Family Home. He recommended that the respondent go on title because the claimant had credit issues. He also testified that he told the parties to get a lawyer to write up something. He testified that he did so because he knew the claimant had owned the property before the relationship and he wanted to ensure the claimant was protected. In cross-examination, Mr. Kempton further clarified that the reason the claimant was taken off the title was because of credit issues and CRA debts, and because the bank required him to be removed from the mortgage.
- [22] The claimant again testified that this transfer of title in the Family Home was part of a fraud. Again, beyond his assertion of fraud, there is no evidence of fraud. I accept the evidence of the respondent as corroborated by Mr. Kempton, and find the title was transferred for the sole purpose of obtaining better financing terms.

Birth of Georgia and Separation

- [23] On October 23, 2021, Georgia was born. The respondent testified that the claimant was not particularly present or supportive during the birth and for the three days that she spent in the hospital. She further testified that once she went home, she was the one who provided care for Georgia and that, although she was having difficulties and suffering from post-partem depression, the claimant refused to help or provide emotional comfort. She identified various text messages between the parties where she is essentially begging the claimant to come home and help her. His responses included that he was "saving the world" and that what he was doing was bigger than anything. He also asked the respondent, by text, not to breastfeed Georgia as she would kill her. This was in obvious reference to the respondent having been vaccinated against Covid.
- [24] Irene Clavora, the respondent's mother, gave similar evidence to that of the respondent concerning the claimant's involvement with Georgia's birth. She testified that he was present for the birth but was on his phone a lot and was not as supportive as he could have been. She testified that after the birth she spent almost every day and night at the Family Home. She testified that the respondent had a difficult time after the birth and basically fell apart. When asked how often the claimant was at the home following the birth, she replied "not a lot".
- [25] Towards the end of November 2021, the respondent eventually discovered the claimant was having an affair.
- [26] On November 28, 2021, the parties separated. The respondent left the Family Home and stayed with her parents for three days. She then returned to the Family Home with Georgia, and the claimant went elsewhere.

Protection Order

- [27] The parties attended several meetings at a Starbucks in December 2021 to discuss their future. The respondent testified the first meeting lasted about 45 minutes before it began to get "nasty" and she left. The next meeting also did not go well as she asked questions about the affair which the claimant refused to answer. At the third meeting, the claimant arrived with his new girlfriend and her children in his truck, and the respondent drove away. At the fourth meeting, the claimant asked the respondent if she wanted to see their dog. She agreed, but when she got to the claimant's truck, she saw the claimant's girlfriend was in the truck, so she left.
- [28] The respondent testified to an event that occurred on December 29, 2021, when the claimant was to visit with Georgia. Specifically, she testified that she took Georgia to see the claimant but, as he arrived with his girlfriend, she walked away. Then, following some text messages, it was arranged that the claimant could see Georgia outside the house where he was residing with his girlfriend. Coincidentally, the respondent's sister lived next door. The respondent attended at the house with her parents. When Georgia was given to the claimant, he began to walk inside the house. The respondent's father told him to bring the baby back. The two of them then got into an altercation. The respondent's brother-in-law, Brian, also became involved, and he pushed the claimant to the ground. The police were called.
- [29] Irene Clavora gave no evidence about this incident during her examination in-chief. However, she was asked about the incident in cross-examination. She confirmed that she was present, that the claimant began walking towards the door with Georgia, that her husband approached the claimant, and that Brian pushed the claimant. She did not see whether her husband grabbed the claimant nor did she see the claimant push her husband. She did testify that Brian was arrested but testified that the charges were dropped.
- [30] The claimant gave no evidence about this incident in-chief. In cross-examination, he agreed that there was an agreement that he would have an outside visit with Georgia. He did not agree that he tried to take Georgia inside the house. He also did not agree that he pushed the respondent's father. He testified that Brian assaulted him and was arrested.
- [31] In view of the above evidence, I find that it was the respondent's father and especially her brother-in-law who became unduly assertive and violent on the day in question.
- [32] Irene Clavora also testified to an incident that occurred one day when she was walking with another grandchild. She testified that the claimant pulled up beside her, rolled down his window, and called her "Fucking whore". She crossed the street, but the claimant turned his truck around, came up beside her again, and said something like she was going to prison. She testified she felt very intimidated.

- [33] On December 30, 2021, the respondent obtained a "Without Notice Protection Order" prohibiting the claimant from contacting the respondent or Georgia. The claimant sought to set that order aside with minimal success. On January 17, 2022, the Provincial Court amended the protection order to allow the claimant to communicate with the respondent by text messages sent to the respondent's sister. The January 7, 2022 order also gave the claimant supervised parenting time.

Support Payments

- [34] In each of December 2021 and January 2022, the claimant paid \$3,000 to the respondent. Although the respondent testified that these payments were used to pay the mortgage and loans owing in respect of a Sea-Doo and a camper, in her submissions she treated them as being made on account of child support payments, which I will also do. The claimant gave the respondent another cheque for \$3,000, but the undisputed evidence of the respondent is that this cheque was dishonoured as the account had insufficient funds.
- [35] On April 25, 2022, the claimant was ordered to pay child support of \$1,000 per month commencing May 1, 2022, on an interim, without prejudice basis. It is undisputed that the claimant made only two child support payments pursuant to this order in May and June of 2022.

Parenting Time

- [36] The January 7, 2022 order gave the claimant supervised parenting time on Saturdays from 10:00 a.m. to noon. This order was later revised on January 28, 2022, to provide more flexibility in relation to the scheduling of parenting time, but the claimant's parenting time remained supervised and limited to two hours on Saturdays.
- [37] The claimant exercised his supervised parenting time with Georgia on January 29, February 9, and February 16, 2022.
- [38] On July 26, 2022, the claimant arranged a parental visit with Georgia, supervised by the Family Services of Greater Victoria. It is unclear on the evidence how long the visit was. During his cross-examination, the claimant stated the visit was longer than 15 minutes, but he did not say how long it was. In any event, after the visit, the Family Services of Greater Victoria emailed the claimant advising him that participants of in-person visits had to be vaccinated against COVID-19 and provide proof of vaccination. It was put to the claimant in cross-examination that there were no further visits with Georgia because he was not vaccinated and refused to get vaccinated. He declined to answer whether he was vaccinated until directed by the Court to do so. When directed, he replied that he was not vaccinated.

[39] On November 28, 2022, the claimant was advised by respondent's counsel that the vaccination policy of the Family Services of Greater Victoria had changed and that the respondent was agreeable to him resuming supervised visits. Notwithstanding this advice, the claimant did not resume visits. Hence, the claimant has not exercised parenting time with Georgia since July 26, 2022.

Sale of the Family Home

[40] On January 10, 2022, the respondent advised the claimant that she wished to sell the Family Home. She offered him the opportunity to purchase her half interest in the home and suggested that they each obtain appraisals. On January 19, 2022, the claimant responded that he would purchase her interest but that he objected to a sale of the home. Notwithstanding the claimant's advice that he wanted to purchase the respondent's interest, he took no steps to do so.

[41] On July 21, 2022, the parties entered into an agreement to sell the Family Home. The agreement provided, *inter alia*, that:

- a) the home would be listed for sale "as is" and not staged;
- b) the claimant could attend the home with peace officers to collect his belongings;
- c) the realtor had recommended the house be listed at \$1,099,998;
- d) any reasonable offer within five percent of the list price will be accepted;
- e) the net proceeds from the sale, after deduction of various agreed-upon expenses, would be distributed on a without prejudice basis, as follows:
 - i. \$22,350 to the respondent's line of credit ending 778;
 - ii. \$27,315 to the respondent's line of credit ending 013;
 - iii. \$75,000 to each of the parties; and
 - iv. the balance to be held in trust.

[42] The respondent explained that the \$22,350 owing on her line of credit ending 778 was in respect of a Sea-Doo they had purchased and that the \$27,315 owing on her line of credit ending 013 was in relation to a payment she had made on December 5, 2021, at the request of the claimant, to Kenroc, one of the claimant's business suppliers. This payment was originally charged to her credit card, but she transferred it to her line of credit to obtain a lower interest rate.

[43] On September 27, 2022, an agreement was entered into for the sale of the Family Home for \$940,000, with a completion date of October 17, 2022. By this time the amounts owing on the respondent's lines of credit had increased to approximately \$27,000 and \$29,000. Following the sale, the proceeds were distributed as set out in a "Revised Authority to Pay/Acknowledgment" prepared by Mullin Demeo Wirk, the solicitors on the sale. The amount

owing on the respondent's line of credit ending 013 was included among the disbursements paid by the solicitors, as was contemplated in the July 21, 2022 agreement, although the amount had increased to \$29,316.44. However, the amount owing on the respondent's line of credit ending 778, which had increased to \$27,231.31, was not included. Pursuant to the "Revised Authority to Pay/Acknowledgment", each party received \$75,000. After payment of all amounts related to the sale and the distributions to the parties, the remaining balance of \$253,046.59 was placed into a trust account.

The Townhouse

[44] Following the sale of the Family Home, the respondent purchased a new home. She testified that the funds for the down payment to purchase the new residence came from the distribution she received in respect of the sale of the Family Home, the funds she received from the sale of the Sooke property, and a loan of \$85,000 from her parents. Irene Clavara confirmed that she and her husband loaned the respondent \$85,000 to purchase the property.

Parentage

- [45] Despite the claimant having pleaded that he is the biological father of the child of the marriage, at the commencement of the trial, he alleged that he was not the father and, in his opening, he advised he was abandoning his claims for shared parental decision-making authority and parenting time.
- [46] The issue of the claimant's parentage, so far as I can tell, first arose on January 18, 2023, when this matter was first set for trial. On that date, the trial was converted to a settlement conference, on consent. An order was made that the claimant was to book a paternity test by January 26. The claimant booked the test much later than required with the result that by the time this trial commenced, the test result was not available. The claimant sought an adjournment based on the non-availability of the test results. This request was refused on the grounds that the claimant had delayed in booking the test and on the basis that, on March 14, 2023, this trial date was ordered to be peremptory on the claimant.
- [47] The results of the paternity test were received during the course of the trial. The test conclusively confirms the claimant is the biological father of Georgia. In his closing submissions, the claimant re-asserted his claims for shared parental decision-making authority and parenting time.

Issues

- [48] The issues to be determined are:
- a) How should parental responsibilities be allocated?
 - b) What parenting time should the claimant have and should it be supervised?

- c) What constitutes family property and debt and how should it be divided?
- d) What pensions exist and how should they be divided?
- e) What are the incomes of the parties for support purposes?
- f) What is the appropriate amount for retroactive and prospective child support?
- g) Is the respondent entitled to spousal support and, if so, in what amount?
- h) How should the funds in trust be distributed?

Analysis

Parental Responsibilities

Submissions

- [49] The claimant submits that parental decision making should be shared by the parties. He says that, although he contested parentage, he is elated that he is the father of Georgia and wants to grow a relationship with her.
- [50] The respondent submits that she should have the sole decision-making authority with respect to Georgia. She says the claimant has had minimal time with Georgia since her birth and that she has been the sole caregiver. She says the respondent has proven unwilling to care for Georgia.

Principles

- [51] The allocation of parental responsibilities is addressed in ss. 40-41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and s. 16.3 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. Under either Act, parental responsibilities may be allocated to one parent entirely, shared equally between both parents or specifically allocated in various ways to each parent.
- [52] Pursuant to s. 16(1) of the DA and s. 37 of the FLA, the only consideration in making parenting orders is the best interests of the child of the marriage. Further, in determining what is in the best interests of the child, the court shall consider the factors set out s. 16(3) of the DA or s.37(2) of the FLA. The factors from s. 16(3) of the DA are:
- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;

- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Discussion

- [53] In my view, a consideration of the factors set out in s. 16(3) of the DA leads inescapably to the conclusion that the respondent should have sole decision-making responsibility with respect to Georgia.
- [54] Georgia was one year of age as of the date of the trial and has spent virtually no time with the claimant. Her age, stage of development, and need for stability all militate in favour of the respondent having decision-making responsibility.
- [55] The evidence has established that Georgia has a strong bond with the respondent and with her maternal grandparents. In contrast, there is an almost total absence of a relationship with the claimant.
- [56] The willingness of each party to support the development and maintenance of Georgia's relationship with the other, marginally favours the respondent. The respondent, through her actions in attempting to arrange parenting time for the claimant, has demonstrated her willingness to support and foster a relationship between the claimant and Georgia. The claimant's actions have been less persuasive, although in submissions he indicated a willingness to support the development and maintenance of the Georgia's relationship with the respondent. He said that he harbours no ill will towards her, that he left the relationship because he was unhappy, and that she is a fantastic mother.

- [57] The history of Georgia's care militates strongly in favour of the respondent.
- [58] The respondent has also clearly demonstrated an ability and willingness to care for and meet the needs of Georgia. She has done so since Georgia was born. In contrast, the claimant has displayed no such ability or willingness. He denied his parentage until presented with irrefutable evidence. His belief in various conspiracy theories also puts Georgia at risk. At the time of her birth, and subsequently, he was more concerned about "saving the world" than addressing the needs of the respondent and Georgia. Similarly, he was unable to exercise his parenting time because he refused to get vaccinated against Covid. In other words, he prioritized his conspiracy theories over his parenting time and Georgia's needs.
- [59] I am also of the view that the claimant has not demonstrated an ability and willingness to communicate and cooperate on matters affecting Georgia. Again, his strongly-held conspiracy theories seem to have prevented him from cooperating with the respondent on important decisions affecting Georgia.
- [60] Accordingly, the respondent will have sole decision-making responsibility in respect of Georgia under s. 16.3 of the DA.

Parenting Time

Submissions

- [61] In his notice of family claim, the claimant initially requested that his parenting time with Georgia be increased to two unsupervised weekends per month with a view to eventually transitioning to equal shared parenting. At the commencement of the trial, he abandoned this request, believing he was not the biological father. However, now that the paternity test has established his parentage, he asks for unsupervised parenting time to be gradually increased to 50 percent.
- [62] The respondent submits that the claimant's parenting time should remain supervised and any increases should be in small increments. She says the claimant has had minimal contact with the child and that she does not even know where he resides.

Principles

- [63] Pursuant to s. 16(1) of the DA and s. 37 of the FLA, the only consideration in making orders concerning parenting time is the best interests of the child of the marriage and the factors that shall be considered are those set out in s. 16(3) of the DA or s. 37(2) of the FLA.
- [64] Pursuant to s. 16.1(8) of the DA and s. 45(3) of the FLA, the court may order that any parenting time be supervised. The appropriate considerations to be addressed when considering an order for supervised parenting were set out by Justice Griffin (as she then was) in *F.K. v. M.K.*, 2010 BCSC 563, at paras. 145- 150:

[145] Numerous legal authorities have commented on the appropriate considerations for imposing terms of supervision on a parent's access.

[146] In *K.M.E. v. D.M.Z.* [1996] B.C.J. No. 464 (S.C.), Quijano J. stated at para. 21:

...Although previous authorities have held that, as a rule, supervised access ought not to be employed as a long-term access arrangement, this is not a firm rule as the court must always be concerned to achieve a result that is in the best interest of the child, and therefore each case will turn on its own facts.

[147] In *V.S.J. v. L.J.G.*, 2004 CanLII 17126 (ON SC), [2004] O.T.C. 460 (S.C.J.), the court found that an order for supervised access, like termination of access, requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship: at para. 1. At paragraph 135, the court set out factors most commonly considered by the courts in terminating access:

1. Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear. See *M.(B.P.) v. M.(B.L.D.E.)*, supra; *Stewart v. Bachman*, [2003] O.J. No. 433 (Sup.Ct.); *Studley v. O'Laughlin*, [2000] N.S.J. No. 210 (N.S.S.C.) (Fam.Div.); *Dixon v. Hinsley*, 2001 CanLII 38986 (ON CJ), [2001] O.J. No. 3707.
2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being. See *Jafari v. Dadar*, supra; *Maxwell v. Maxwell*, [1986] N.B.J. No. 769 (N.B.Q.B.); *Abdo v. Abdo* (1993), 1993 CanLII 3124 (NS CA), 126 N.S.R. (2d) 1 (N.S.C.A.); *Studley v. O'Laughlin*, supra.
3. Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent. See *Tremblay v. Tremblay* (1987), 1987 CanLII 147 (AB KB), 10 R.F.L. (3d) 166; *Reeves v. Reeves*, [2001] O.J. No. 308 (Sup.Ct.).
4. Ongoing severe denigration of the other parent. See *Frost v. Allen*, [1995] M.J. No. 111 (Man.Q.B.); *Gorgichuk v. Gorgichuk*, supra.
5. Lack of relationship or attachment between noncustodial parent and child. See *Studley v. O'Laughlin*, supra; *M.(B.P.) v. M.(B.L.D.E.)*, supra.
6. Neglect or abuse to a child on the access visits. See *Maxwell v. Maxwell*, supra.
7. Older children's wishes and preferences to terminate access. See *Gorgichuk v. Gorgichuk*, supra; *Frost v. Allen*, supra; *Dixon v. Hinsley*, supra; *Pavao v. Pavao*, [2000] O.J. No. 1010 (Sup.Ct.).

[148] At paragraph 137, the court in *V.S.J. v. L.J.G.* found that those factors listed above would also be relevant to a consideration of supervised access. The court also stated:

...It is possible through a supervision order to do the following: protect children from risk of harm; continue or promote the parent/child relationship; direct the access parent to engage in programming, counselling or treatment to deal with issues relevant to parenting; create a bridge between no relationship and a normal parenting relationship; and, avoid or reduce the conflict between parents and thus, the impact upon children.

[149] At paragraph 143 of *V.S.J. v. L.J.G.*, the court stated that when terminating or restricting access, it is necessary for the court to weigh and balance numerous factors in the context of the child's best interests including:

1. The maximum contact principle;
2. The right of a child to know and have a relationship with each parent;
3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
4. The risk of harm: emotional, physical and sexual;
5. The nature of the relationship between the parents and its impact on the child;
6. The nature of the relationship and attachment between the access parent and the child; and,
7. The commitment of the access parent to the child.

[150] In *Merkand v. Merkand*, [2006] O.J. No. 528 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 117, the Court found that an order for indefinite supervised access, providing neither transition to unsupervised access nor a fixed review date should be made in rare circumstances. The Court also found that a trial judge's order which did not provide for these does not preclude the parent with access from seeking leave to vary the terms of the access in the future upon proof of a material change in circumstances.

[Emphasis added.]

Discussion

[65] I am not satisfied that there is a need for the claimant's parenting time to be supervised.

[66] As indicated, an order for supervised parenting requires evidence of exceptional circumstances. Such circumstances are not present here. This is best illustrated by what the evidence before me does not indicate. There is no evidence of long-term harassment of the respondent by the claimant. There is no evidence of violence by the claimant against the respondent. There is no evidence of drug or substance abuse by the claimant. There is no evidence of parental alienation by the claimant. There is no evidence that the claimant has denigrated the respondent. There is no evidence the claimant has neglected or abused Georgia.

- [67] I note that the incident of December 29, 2021, seems to have been a significant factor in the obtaining of the initial supervision order in this matter, which was obtained the following day. However, the evidence of what transpired that day falls short of establishing that the claimant engaged in any violence. To the contrary, the evidence is that it was the respondent's brother-in-law who resorted to violence.
- [68] I have also considered the stroller incident where the claimant called the respondent's mother an unflattering name and told her she was going to prison. Although such conduct is inexcusable, I take into account that it was an isolated incident, that it did not escalate, and that emotions were running high at the time.
- [69] The claimant's beliefs regarding Covid-19 cause me some concern, as they could potentially put Georgia at risk. However, these concerns are addressed by the respondent having sole decision-making responsibilities in respect of Georgia.
- [70] Accordingly, I decline to order that the claimant's parenting time be supervised.
- [71] I now turn to what that parenting time should be.
- [72] The claimant currently has parenting time of two hours on Saturdays pursuant to the January 28, 2022 order of the Provincial Court. In my view, upon a consideration of the factors set out in s. 16(3) of the DA, it is appropriate to increase the claimant's parenting time.
- [73] I commence with the observation that both parties have the ability to meet Georgia's needs. Apart from the claimant's belief in conspiracy theories, there is no suggestion in the evidence that he does not have the ability to parent Georgia and meet her needs. The respondent doubts the willingness of the claimant to parent, but, despite the claimant's poor track record to date, and given that parentage is now established, I am satisfied that he has both the ability and willingness to parent, albeit not at the same level as the respondent.
- [74] Georgia currently has a very strong bond and relationship with the respondent and has virtually no relationship or bond with the claimant. However, the claimant is Georgia's father, and her overall emotional well-being will eventually be enhanced if she can develop a strong emotional bond with him as well. This cannot be achieved with the current arrangement of two hours on Saturdays.
- [75] Given Georgia's young age and the fact that the respondent has been her only caregiver since birth, any change in the respondent's parenting time must be gradual and measured to avoid any trauma for Georgia.
- [76] In my view, the claimant's parenting time should be increased to four hours on Saturdays commencing immediately. In six months, the claimant's parenting time is to increase to eight hours on Saturdays. The parties will further be allowed to apply to review the parenting time, without having to show a material change in circumstances.

Property and Debt Division**Submissions**

- [77] The claimant submits that a portion of the Family Home is excluded from family property since he owned it before the commencement of the relationship and because he was "illegally removed from [the] mortgage". He similarly complains that he was somehow deprived of his interest in the Sooke property and requests undisclosed compensation. He also gave evidence suggesting that he is entitled to a share in the respondent's townhouse, which was purchased after separation, because it was purchased using family funds, or funds stolen from him. However, in his submissions he stated that he did not claim an interest in the townhouse. In relation to the family chattels, the claimant submits that the respondent sold items at less than market value and the difference should go to him. He also submits that the respondent has retained or sold his personal belongings, for which he seeks compensation. Finally, he submits the respondent sold, or has in her possession, items of property not disclosed including: Boston Bruins memorabilia valued at \$8,000; Jewellery valued at \$72,000; a paint machine valued at \$700, and various furniture and electronics.
- [78] Concerning family debt, the claimant says that the debt of his company, QVD, should be subject to division.
- [79] The respondent submits that all family property should be divided equally. In relation to the Family Home, she submits that no part of its value should be excluded because the claimant has not met the onus on him of proving the value of the exclusion and, alternatively, he lost his exclusion when the home was transferred into the names of the parties jointly in 2018 or into her name solely in 2021. In relation to the Sooke property, she submits that their respective interests have already been determined and divided equally in the orders made in Victoria Registry action No. 220874.
- [80] Concerning family debt, the respondent submits that all existing debt should be the responsibility of the party who incurred the debt. She submits that the claimant has not proven the existence or amounts of the various debts he lists in his financial statements, despite being ordered to provide documentation of those debts. The respondent further disputes that the debt of QVD should not be included as family debt since, inter alia, the claimant has not proven the existence or value of such debt.

Principles

- [81] Part 5 of the FLA addresses "Property Division". Under s. 81 of the FLA, each spouse is entitled to a presumptive one-half undivided interest in each family asset as a tenant in common upon separation. However, the presumptive one-half undivided interest under s. 81(b) is "subject to an agreement or order that provides otherwise and except as otherwise set out in this Part and Part 6 [Pension Division]". Thus, the undivided one-half interest as a

tenant in common to which a spouse is presumptively entitled upon separation is subject to an order for reapportionment under s. 95.

[82] Subject to the exceptions in s. 85, "family property" is all real and personal property owned by one or both spouses at the date of separation (s. 84(1)(a)) or acquired by one or both spouses after separation if it derives from (the disposition of) property encompassed by s. 84(1)(a).

[83] Family debts are also divisible under s. 86 of the FLA and, pursuant to s.87 of the FLA, are to be valued as of the date of the hearing.

[84] Family debt is defined in s. 86 as all financial obligations incurred by a spouse either during the period of the relationship or after separation if incurred for the purpose of maintaining family property. Pursuant to this section, debt acquired after separation is not family debt unless incurred to maintain family property.

Valuation

[85] Under s. 87 of the FLA, unless otherwise ordered, all family property and family debt are to be valued according to its fair market value at the date of the hearing respecting division of family property and debt. Because family property is valued at the hearing date, the parties presumptively share any post-separation increases in value: *Jean Louis v. Jean Louis*, 2020 BCCA 220 at paras. 33-34. Section 87 includes a discretion to order a different valuation date; however, setting the valuation date at another date is effectively a reapportionment or unequal division of property and should only be done where there is compelling evidence of significant unfairness: *Banh v. Chrysler*, 2022 BCCA 74 at paras. 26-28; *Rudyak v. Bekturova*, 2018 BCCA 414 at para. 35; *Jean Louis* at para. 36; *Kumagai v. Campbell Estate*, 2018 BCCA 24 at para. 76)).

Excluded Property

[86] Section 85(1) of the FLA sets out what is excluded from family property:

85 (1) The following is excluded from family property:

- (a) property acquired by a spouse before the relationship between the spouses began;
- (b) inheritances to a spouse;
- (b.1) gifts to a spouse from a third party;
- (c) a settlement or an award of damages to a spouse as compensation for injury or loss, unless the settlement or award represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;

- (d) money paid or payable under an insurance policy, other than a policy respecting property, except any portion that represents compensation for
 - (i) loss to both spouses, or
 - (ii) lost income of a spouse;
- (e) property referred to in any of paragraphs (a) to (d) that is held in trust for the benefit of a spouse;
- (f) a spouse's beneficial interest in property held in a discretionary trust
 - (i) to which the spouse did not contribute, and
 - (ii) that is settled by a person other than the spouse;
- (g) property derived from property or the disposition of property referred to in any of paragraphs (a) to (f).

[87] The onus and burden of proving property is excluded is on the spouse making the claim: FLA, s. 85(2); Zhao v. Fang, 2022 BCCA 227 at para. 25. Such claims can be proven by viva voce evidence of a spouse, provided that evidence is accepted: Brazinsky v. Brazinsky, 2023 BCCA 359 at para. 70.

Evidence of Value

[88] The value of family property should be established by proper expert evidence. However, such evidence is often lacking when family property is divided and the court is frequently called upon to consider non-expert evidence of value, such as provincial/municipal assessments of the value of a real property. The court may rely on such assessments when dividing property between spouses because there is no clearly defined burden of proof. However, the court may not rely on such non-expert evidence in relation to excluded property because there is a clearly defined burden on the party seeking the exclusion: Brazinsky at paras. 80-81.

Discussion

Introduction

- [89] The parties have identified, or alleged the existence of, various properties and debts that are to be divided. The properties that have been identified as potentially being subject to division are:
- a) The Family Home, which was sold post-separation;
 - b) The Sooke property;
 - c) The claimant's company, QVD;

- d) Various financial accounts; and
- e) Various chattels.

The Family Home

- [90] In relation to the Family Home, it is undisputed that this property was owned by the claimant before the parties commenced their relationship. A portion of it is therefore, prima facie, excluded property. However, the law is clear that a party claiming excluded property has the onus of proving not just the exclusion but the amount of the exclusion. Moreover, insofar as at least real property is concerned, expert evidence must be tendered of the value of the exclusion. The claimant has wholly failed to prove the value of his exclusion with properly admissible evidence. The only evidence of the value of the Family Home in 2014 was the claimant's "guess" that it was worth \$650,000 in 2014 and his "guess" that the amount then owing on the mortgage was \$450,000. Guesses are not evidence that I can rely on. Moreover, the claimant's guess was based on an alleged appraisal done in 2017 which was not proven.
- [91] Given that the claimant has not proven the value of the exclusion in the Family Home, I need not consider the other arguments advanced by the respondent.
- [92] The amount placed into the trust account of Mullin Demeo Wirk was \$253,046.59 after payment of the mortgage, all expenses of sale, the distributions to the parties, and the payment of the respondent's line of credit ending 013. If divided equally, the parties would each be entitled to \$126,523.30.
- [93] The respondent submits that before the proceeds held in the trust account of are divided equally between the parties, the amount must be adjusted to take into account the payment of the line of credit ending 013, as this was in relation to an amount owing to Kenroc, one of the claimant's suppliers. I do not agree. The amount owing on the line of credit, which was in the respondent's name, was a family debt. The fact that it originated because of a payment to Kenroc does not alter its character as a family debt.
- [94] Therefore, subject to further adjustments to be addressed herein, the proceeds from the sale of the Family Home are to be divided equally with each party being entitled to \$126,523.30.

The Sooke Property

- [95] Concerning the Sooke property, I agree entirely with the respondent. The interests of the parties in the Sooke property was conclusively determined in Victoria action No. 220874. No appeal has been taken from the order made in that action and there has been no application to set the order aside. It cannot be relitigated in this action.

[96] I would add that the claimant's allegations that there was somehow a fraud committed in respect of the Sooke property is completely unsupported by any coherent evidence, and I reject the allegation in its entirety.

The Townhouse

[97] Although the claimant abandoned any claim to an interest in the townhouse purchased by the respondent after the separation date when making his submissions, he suggested in his evidence that the townhouse was purchased using family funds, or funds stolen from him. I reject any such suggestion. The respondent explained the sources of the funds used to purchase the townhouse, which were not family property. For certainty, no part of the respondent's townhouse is family property.

QVD

[98] QVD is the claimant's company. The financial statements for the company for the years 2018 through 2021 are attached to the claimant's financial statements sworn April 2022 and January 2023. The 2021 financial statement for QVD indicates that the company had assets of approximately \$140,000 and liabilities of approximately \$164,000, including a loan due to shareholder of approximately \$34,000. The statements further disclose that the company's net income in the years 2020 and 2021 was \$30,000 and \$35,000 respectively.

[99] The claimant testified in cross-examination that the company has now been shut down.

[100] Neither party has provided me with a valuation of QVD.

[101] Given that I have no valuation of QVD, it is not possible for me to ascribe a value to it for the purposes of division of family property, and I decline to do so. Moreover, given the financial statements and its apparent demise, I doubt it had any significant value on separation or by the time of the trial.

Financial Assets

[102] The claimant lists no financial assets in his name in either of his financial statements. However, the evidence has established that he does have financial assets which he failed to properly disclose his financial statements. The evidence has established that, at the date of separation, he had a life insurance policy with a cash value and at least one bank account with TD Canada-Trust which had a minimal balance at the date of separation, but had a balance of over \$17,000 as of April 19, 2022, the last date for which I have any information about this account.

- [103] In contrast with the claimant, the respondent has given full disclosure of her various financial accounts and assets. Her April 20, 2022 financial statement lists two chequing/savings account, a TFSA account, and an RRSP account. Her later financial statements provide updated balances with respect to these accounts and lists a new RESP account established post-separation.
- [104] The significant financial assets held by the parties at the date of separation or date of trial, and my comments and findings in respect of them, are:
- a) A life insurance policy in the name of the claimant which he testified in cross-examination that he cashed in after separation for approximately \$20,000. He did not provide any documentary evidence of this. I note, however, that this policy is referenced in the QVD financial statements as having a cash value of \$45,000. Additionally, a statement has been introduced into evidence dated July 23, 2019, which states that the net cash value was then \$14,437 and that it had increased by slightly over \$1,000 in the past year. Doing the best I can with this minimal evidence, I find the value of the life insurance policy to be \$20,000;
 - b) A TD Canada-Trust bank account in the name of Jason Green. The claimant acknowledged in cross-examination that this was his account. The only documentation provided in respect of this account was a 12-page summary of transactions from January 22, 2019, to April 19, 2022. That summary discloses that the balance as of the date of separation was slightly over \$200 and the balance as of April 19, 2022, was over \$17,000. I find that no part of this account is family property to be shared since the balance as of the date of separation was a nominal amount and the later higher balance was due to deposits made into the account after separation;
 - c) A Scotiabank chequing account in the name of the respondent. Her financial statements disclose the balance in this account was \$1,200 as of April 12, 2022, \$83,000 as of December 8, 2022, and \$3,000 as of February 17, 2023. She explained that the balance of \$83,000 was due to her having received her \$75,000 share of funds from the sale of the Family Home and \$39,000 from the Sooke property. I find that no part of this account is family property to be shared since the balance as of the date of separation was a nominal amount and the subsequent larger amount was due to the proceeds from the sales of the Family Home and Sooke property;
 - d) A Scotiabank TFSA account in the respondent's name. The respondent testified that this account had a balance of \$15,000 at the date of separation and that she used the funds to pay the mortgage on the Family Home and daily expenses. The respondent's February 2023 financial statement discloses the amount remaining in the account is \$615. Given the funds were used, at least in part, to pay the mortgage on the Family Home, and the amount remaining in the account is nominal, I find that no part of this account is family property to be shared;

- e) A Scotiabank RRSP in the name of the respondent and included in her February 2023 financial statement as having a value of \$19,800. The respondent accepts that this is family property to be divided and submits that it should be divided by way of a spousal rollover. I agree and will make an order to this effect; and
- f) An RESP in the name of the respondent with a value of \$1,000. The respondent testified that this account was established post-separation. It is therefore not family property and is, in any event, a minimal amount.

Chattels

[105] Before I address the specific chattels to be divided, I note that I reject the claimant's submissions that the respondent sold items at less than market value or that she retained or sold items that she has not disclosed. The respondent gave very specific and detailed evidence of her efforts to sell various items and kept records of what she sold, for what amounts, and what she was unable to sell. I accept her evidence. Moreover, the claimant has provided no evidence that the respondent sold anything below market value.

[106] The parties identified various chattels in their financial statements or when giving evidence that are alleged to be subject to division. These chattels, and my comments in respect of each, are:

- i. A 2014 Dodge Ram, which was owned by the claimant at the time of separation and which the claimant acknowledges having sold for \$45,000. The proceeds from that sale were retained by the claimant and not shared with the respondent. These proceeds are family property to be divided;
- ii. A 2011 Mercedes SUV, which was owned by the respondent at the date of separation and which the respondent traded-in after separation to purchase a Nissan Rogue. The trade-in value was \$11,000, which amount is family property to be divided;
- iii. A 2021 Sea-Doo, that was purchased on June 25, 2021, using the respondent's Scotiabank line of credit ending 778. This Sea-Doo was sold by the claimant for \$25,000 after separation. He alleges that he paid half of this amount to the respondent and got a receipt from her proving same. The respondent denied receiving a share of the proceeds. Importantly, the claimant did not provide the receipt he allegedly got from the respondent, and he has provided no other evidence that he shared the proceeds with the respondent. I find that the proceeds of the sale are family property, were retained by the claimant, and not shared with the respondent.
- iv. A 2016 Sea-Doo and trailer which was purchased before separation. This Sea-Doo is in the claimant's name, but in the respondent's possession, and is family property. The claimant testified that this was purchased for \$17,000 but he did not specify whether that amount included the trailer, which he testified has a value of \$1,000, and he also did not testify when it was purchased. In his financial statement, he also inexplicably values it at \$22,000. The respondent values it at \$12,000 in her financial statement. There is no other evidence of the value of this

item. Doing the best I can with this evidence, and assuming some depreciation, I value the 2016 Sea-Doo and trailer at \$16,000. Further, I will order that this chattel is to be delivered up to the claimant as his sole and exclusive property.

- v. A 2008 Sea-Doo and trailer, which was purchased for \$7,300 before separation. This item was bought by the parties together with the respondent's parents and sister pursuant to an agreement that provided they would each hold a 20% interest. The collective interest of the parties in this item is therefore 40 percent. Again, the evidence of the value of this item is minimal. The claimant values it at \$10,000 in his January 2023 F8, but, as this exceeds the purchase price, I do not accept this valuation. Assuming there would be some depreciation in this item, I value the 2008 Sea-Doo and trailer at \$6,000, meaning the parties collective interest subject to division is \$2,400 ($\$6,000 \times 0.4$). Also, since the other owners of this item are the respondent's parents and sister, I will order that the claimant's interest is to be conveyed to respondent as her sole and exclusive property.
- vi. A 2015 Adventurer Eagle Cap 850 Camper, which was purchased before separation and sold by the respondent on July 16, 2022, for \$33,000. The sale proceeds were used to pay off the outstanding loan amount of \$29,130.63. The net proceeds that she retained and did not share with the claimant were \$3,870. This amount is family property to be divided; and
- vii. Miscellaneous Household furniture and equipment which the respondent testified that she sold after the sale of the Family Home. She identified a comprehensive list of the items sold for a total of \$5,035. This amount is family property and subject to division.

[107] In addition to the above noted chattels, the claimant alleges that the respondent has jewellery which is family property and that has a value of \$75,000 or \$80,000. The jewellery included an engagement ring, earrings, a bracelet, and a necklace. There is absolutely no evidence of the value of these items, and I decline to include them in the division of family property.

[108] The claimant additionally alleges that the respondent has retained numerous household items, including a collection of Boston Bruins memorabilia that he says has a value of \$8,000. The respondent testified that she does retain a number of items that she was unable to sell. She provided a list of the items together with her estimates of the values. The total value she ascribes to the items retained is \$2,350. The list includes some Boston Bruins memorabilia, which she values at \$100. Other items on the list include furniture, small appliances, and prints.

[109] I reject the claimant's valuation of the Boston Bruins memorabilia as it is completely unsupported by any actual evidence. However, the Boston Bruins memorabilia is to be returned to the claimant. The remaining items on the respondent's list of unsold items are to be retained by her as her sole and exclusive property. Doing the best I can with the minimal evidence, the value of these items, which is family property to be divided, is \$2,000.

[110] With respect to the Boston Bruins memorabilia, it was put to the claimant in cross-examination that he gifted some of these items to the respondent's father. He denied this. However, Irene Clavora testified that the claimant gifted her and her husband two framed Boston Bruin's jerseys. I accept her testimony and find that the claimant did make this gift to the respondent's parents. For certainty, those items are the property of the respondent's parents and not family property to be divided.

Family Debts

[111] The main items of family debt were the mortgages on the Family Home and the Sooke property, the loan owing on the camper, and the respondent's two lines of credit ending 778 and 013. These debts were paid off in circumstances that effectively resulted in an equal division between the parties and I do not need to address them further.

[112] The claimant lists unsecured debts in his financial statements which he says constitute family debt. In his financial statement sworn April 20, 2022, he lists unsecured debts totalling \$78,000 but these are minimally described. He merely says they are to "Kenroc", "Crown", and "Mastercard". In his financial statement sworn January 11, 2023, he lists debts totalling \$159,344. One is a debt owed by him to CRA in the amount of \$13,780 in respect of his 2021 income taxes. The other debts are all amounts owed by his company, QVD.

[113] I accept only that a portion of the CRA debt in the amount of \$13,780 is family debt. The existence and amount of this debt was proven by the notice of assessment from the CRA attached to the claimant's financial statement. Most of this debt was incurred in 2021 before separation. The portion that is family debt is \$12,600 ($\$13,780 \times 11/12$). The existence and amounts of the other debts have not been proven on a balance of probabilities, and, in any event, QVD appears to be the debtor, not the claimant. In fact, during submissions in response to a question from the Court, the claimant said that he could walk away from these debts.

Equal Division

[114] The following table lists the family property in the respective names or possession of the parties, and the proceeds received by a party from any disposition of family property that was not shared with the other.

Property

Claimant

Respondent

Family Home proceeds

\$126,523

\$126,523

Sunlife Insurance Policy

\$20,000

2014 Dodge Ram

\$45,000

2011 Mercedes

\$11,000

2021 SeaDoo

\$25,000

2016 SeaDoo

\$16,000

2008 Seadoo

\$2,400

2015 Eagle Cap 850 Camper

\$3,870

Sold Household Items

\$5,035

Unsold household Items

\$2,000

Total

\$232,523

\$150,828

[115] The only debt remaining to be divided is \$12,600, being the portion of the claimant's CRA debt that is family debt. When this is taken into account, the claimant's net family property is \$219,923 (\$232,523 - \$12,600), and the respondent's net family property is \$150,828. To equalize the family property and debt, the claimant is required to pay an equalization payment to the respondent in the amount of \$34,547.

Pension Division

[116] It is undisputed that the respondent has a pension with the Municipal Pension Plan - Island Health and it is agreed that this pension is to be divided equally between the parties. I will order such division for the period from November 28, 2014, to November 28, 2021.

Support Claims

Submissions

- [117] The respondent submits that the claimant is liable to pay both child support and spousal support. She submits that the Court should impute an income to the claimant in the amount of \$214,687 on the grounds that (1) he has failed to provide proper disclosure of his income and (2) that his personal expenses have been paid QVD resulting in a lower income to him. She seeks an order for retroactive child and spousal support from December 2021, in the amounts of approximately \$23,367 and \$61,500, respectively. She seeks prospective child and spousal support in the amounts of \$1,861 and \$2,870 per month.
- [118] The claimant now concedes that he is required to pay child support to the respondent. In relation to spousal support, he merely submits that the respondent makes more money than him and he leaves it up to the Court to decide whether she is entitled to support. He submits that any support payable should be based on his income as disclosed in his financial statements.

Legal Principles

Income for Support

- [119] Both the FLA (s. 150) and the DA (s. 15.1(3)) adopt the use of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], to determine the appropriate amount of child support. Deviation from the Guidelines is allowed in limited circumstances (FLA, s. 150 and DA, s. 15.1(8)). If the court orders an amount of child support different from that required by the Guidelines, the reasons for having done so must be provided (FLA, s.150(5) and DA, s. 15.1(6)). Any reductions to the amount of Guidelines child support are based on an application for "undue hardship" which is set out at s. 10 of the Guidelines.
- [120] The annual income to be used to determine support payments is generally the line 15000 total income from the spouse's most recent T1 General Income Tax Return, adjusted in accordance with Schedule III: Guidelines, ss. 2(3) and 16. However, if the court is of the opinion that the income reported in the most recent T1 form is not the fairest determination of the spouse's income, the court may have regard to the spouse's income over the past three years and determine the amount that is fair and reasonable: Guidelines, s. 17.
- [121] Where a spouse earns income through a business, there is an opportunity for the spouse to skew or minimize their income by having the business pay personal expenses. This frequently arises with expense deductions related to vehicles, meals, entertainment, internet and cell phone charges. Sections 18(2) and 19(1(g)) of the Guidelines address such deductions. Where such expenses are challenged under either section, the spouse asserting the expense should be added back to income must identify the specific expenses challenged and the other spouse must then prove the reasonableness of the deduction: M.T. v. J.S., 2023

BCCA 64 at para. 8. The question the court should answer is whether the business deductions include expenses which provide a personal benefit or constitute an ordinary living expenses that would normally be paid from a party's employment income. If so, they should be added back to income: M.T. at para. 15.

[122] Schedule III to the Guidelines provides for other deductions and adjustments that are to be made when determining income for support purposes. The deductions include: child support received (Sched. III, s. 2); spousal support received (Sched. III, s. 3(a)); universal child care benefits (Sched. III, s. 3(b)); social assistance income (Sched. III, s. 4); business investment losses (Sched. III, s. 7); and carrying charges and interest expenses (Sched. III, s. 8). The adjustments include: adjust dividend income from Canadian corporations to the actual amount of the dividend (Sched. III, s. 5); replace taxable capital gains and losses with the actual amounts (Sched. III, s. 6); and, adjust income where self-employed income is reduced by non-arm length payments (Sched. III, s. 9).

[123] Section 19 of the Guidelines provides that in certain circumstances the court may impute an income to a spouse. The circumstances include:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax;

Child support

[124] Child support is addressed in s. 15.1 of the DA and ss. 146 -150 of the FLA.

[125] Section 146 of the FLA defines "child" to include "a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians". Section 2 of the DA defines a "child of the marriage" to be:

a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or

- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[126] 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 147(1)(a) and (b). The DA does not contain a similar express duty but such a duty is implied from the Guidelines.

Spousal Support

[127] Spousal support is addressed in both s. 15.2 of the DA and ss. 160-165 of the FLA. The objectives of spousal support are set out in s. 15.2(6) of the DA and s. 161 of the FLA, in essentially the same terms. The objectives are to:

- recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[128] The factors to take into account when making awards of spousal support are set out in s. 15.2(4) of the DA and s. 162 of the FLA, in essentially the same terms:

15.2(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[129] It is to be noted that pursuant to s. 15.2(5) of the DA, misconduct of a spouse in relation to the marriage is not a factor to be taken into consideration. Section 166 of the FLA is to similar effect. It provides:

166 In making an order respecting spousal support, the court must not consider any misconduct of a spouse, except conduct that arbitrarily or unreasonably

- (a) causes, prolongs or aggravates the need for spousal support, or
- (b) affects the ability to provide spousal support.

- [130] The principles generally applicable to spousal support are summarized in *Chutter v. Chutter*, 2008 BCCA 507. There are three grounds for entitlement to spousal support: compensatory, non-compensatory, and contractual.
- [131] The nature and significance of compensatory spousal support is discussed in *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715, and summarized in *Chutter* at paras. 50-53. More recently, in *Hague v. Hague*, 2022 BCCA 325, Justice Marchand succinctly explained compensatory support as follows:
- [36] The underlying goal of compensatory spousal support is the equitable sharing of the economic consequences of a marriage or its breakdown. It is intended to provide "redress for economic disadvantage arising from the marriage (such as diminished earning capacity and sacrificed career opportunities to take on child care responsibilities) or the conferral of an economic advantage upon the other spouse (such as contributions to enhanced career development)": *Parton v. Parton*, 2018 BCCA 273 at para. 39; see also *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-51.
- [132] In *Hague*, Marchand J. addressed a variation application where, among other things, the payor spouse had remarried and, as a result, was able to share his expenses with his new spouse. At para. 49, Marchand J. held that such sharing of expenses was not a relevant consideration and that what mattered is whether the payee spouse is entitled to continue to receive support to compensate him/her for the economic consequences of their marriage and its breakdown.
- [133] Non-compensatory spousal support is "grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union." Upon marriage dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, not the state (*Chutter* at paras. 54-55). "Need" alone may be sufficient to ground a claim for spousal support (*Bracklow* at para. 43). Importantly, a compensatory support claim in a marriage of long duration should strive to achieve a "rough equivalency of standards of living" post-separation. In assessing the "needs" of the recipient spouse, the standard of living enjoyed by the parties during the marriage must be considered as well as the standard of living of the payor spouse after the marriage (*Chutter* at para. 60).
- [134] The third basis upon which entitlement to spousal support can be established is through a contractual arrangement between the parties. I will not address this further as there is no claim for spousal support on a contractual basis.

Discussion

Incomes

- [135] The determination of the respondent's income for support purposes is not particularly complicated. As I have indicated, the respondent is a nurse and worked as such throughout the relationship, except when on maternity leave. Her financial statements and tax returns

disclose her line 15000 income as being: \$94,753 in 2019; \$103,414 in 2020; and \$100,469 in 2021. The respondent paid union dues in each of those years, which are deducted from line 15000 income when determining Guidelines income. In 2021 she paid union dues of \$2,306.76, meaning her Guidelines income for 2021 was \$98,163 (\$100,469 - \$2,306).

[136] Due to the birth of Georgia, the respondent commenced maternity leave in October 2021. She remained on maternity until December 5, 2022, when she returned to work part time. In April 2023, she returned to full-time employment.

[137] During the respondent's maternity leave period, she was paid benefits through employment insurance and also received a top-up from her employer that continued until April 2022. The respondent deposed in her financial statement filed December 8, 2022, that her 2022 Guidelines income was approximately \$30,000. This amount was comprised of employment insurance benefits of \$24,395 and a top- up of \$5,851 from her employer. However, in addition to these amounts, she received employment income of \$6,075 in December 2022 after returning to work. Therefore, her Guidelines income for 2022 is \$36,300.

[138] The respondent's income for 2023 is addressed in her most recent financial statement filed February 17, 2023. She deposes in her financial statement that her Guidelines income for 2023 will be \$68,874. However, I find this is understated. She testified that she returned to work full time in early April 2023. Given her 2019 and 2020 income, she can expect to earn at least \$75,000 from April to December 2023. In addition, she was working part time from January 2023. The pay stubs entered into evidence indicate that she received bi-weekly paycheques on January 13 and 27, February 10 and 24, March 10 and 24, 2023 in the amounts of \$3,845.69, \$1,254.77, \$2,222.37, \$3,760.76, \$2,121.92, and \$4,538.16. These amounts total \$12,842, and she would have received at least one additional part-time paycheque before commencing full-time employment. Hence, her total Guidelines income in 2023 will be approximately \$90,000. Moreover, her income going forward will be at least \$100,000.

[139] The respondent's Guidelines income for support calculations is therefore as follows:

- a) \$98,163 for 2021;
- b) \$36,300 for 2022;
- c) \$90,000 for 2023; and
- d) 100,000 for 2024 onwards.

[140] The claimant's Guidelines income is more difficult to determine. His tax returns disclose the following line 15000 income:

- a) \$71,062 for 2019;
- b) \$94,338 for 2020; and

c) \$93,987 for 2021.

[141] In his financial statement filed January 11, 2023, the claimant deposes his income to be \$30,000. He deposes this income was employment income but did not attach any documents evidencing such income.

[142] The claimant gave disjointed, inconsistent, and incomplete evidence about his working/employment history subsequent to the parties' separation. He testified in chief that he earned \$94,000 per year without any explanation as to where he worked. When asked by the Court where he worked, he replied with Swiftsure Drywall and that he had been working with them for three months. He further testified that he had been in Manitoba but did not specify why, for how long, or whether he was working while in Manitoba. In cross-examination he said he was in Manitoba in December 2022, but again did not say for how long. In cross-examination he also stated that the business of QVD had been shut down. In submissions he said that because of the dispute over the Sooke property, he got no more work from the developer of that property and, without that work, he was "dead in the water". He said in submissions that he had to stop working.

[143] The respondent submits that I should impute an income of in excess of \$200,000 to the claimant. I agree that this is an appropriate case in which to impute income but do not agree to the amount.

[144] The Guidelines provide that income may be imputed where a spouse is "intentionally under-employed or unemployed" or where the spouse "has failed to provide income information when under a legal obligation to do so". Both circumstances prevail here. The claimant has failed to explain why his income is only \$30,000 as he deposes, which is a very significant decrease from his line 15000 income in 2019-2021. He has not explained why he went to Manitoba, what he was doing in Manitoba, whether he earned income in Manitoba, or when he returned from Manitoba. He has failed to adequately explain why QVD was shut down. He has also failed to provide income information as required. The only document he provided was a letter from Swiftsure Drywall dated March 8, 2023 stating he has been employed since February at \$40 per hour. In these circumstances, it is appropriate to impute an income to him.

[145] As to the amount of the income that should be imputed, I commence with the claimant's line 15000 income reported in his 2020 and 2021 tax returns, being \$94,338 and \$93,987. These amounts, include grossed-up dividend income of \$86,599 in 2020 and \$86,250 in 2021, which must be adjusted pursuant to s. 5 of the Guidelines to remove the gross-up. As the gross-up is 38 percent, the actual amounts he received in dividends in both years would have been approximately \$63,000. With the adjustment, his income in 2020 and 2021 was approximately \$71,500.

[146] The respondent submits that various expenses by QVD should be added to the claimant's income because they represent the actual funds available to the claimant for support. The particular expenses the respondent says should be added back are in relation to

amortization, insurance, interest and bank charges, meals and entertainment, office, professional fees, rent, telephone, utilities, and vehicle. The respondent relies on the fact that in cross-examination the claimant was unable to explain most of these expenses. In particular, he was unable to explain the expenses for amortization, insurance, professional fees, or insurance. He acknowledged that he had no office other than a home office. He was unsure what the utilities expense could be other than for his home office. He also acknowledged that the vehicle expense was partly for personal use. In relation to the expense for rent, he testified that it was for storage of his equipment.

[147] I agree with the respondent that some of these expenses must be added back to the claimant's income but not all. I do not agree that the amortization, insurance, interest and bank charges, or professional fees should be added back. These are ordinary and usual business expenses, and, although the claimant could not fully explain them, I have no reason to doubt that they are legitimate business expenses and do not provide a personal benefit or constitute an ordinary living expense of the claimant. Similarly, although the claimant could not fully explain the rent expense, he did testify that he rented a facility for the storage of his equipment. I agree with the respondent that at least a portion of the expenses for office, telephone, utilities and vehicle are expenses that provide a personal benefit to the claimant or constitute an ordinary living expense that he would normally pay from his income. These amounts are:

Item

2020

2021

Meals and Entertainment

\$9,414

\$142

Office

\$3,390

\$1,998

Telephone

5,309

4,907

Utilities

3,479

7,472

Vehicle

28,947

21,953

Total

\$52,559.00

\$38,493.00

[148] The portion of the above amounts to be added back to the claimant's income is difficult to ascertain. However, once these expenses were put in issue, the onus was on the claimant to establish the deductions were reasonable. He has not discharged the onus on him. Accordingly, when these expenses are added to the adjusted incomes of the claimant, his Guidelines income becomes \$124,059 for 2020 and \$109,993 for 2021. The average of these amounts is \$117,000. This is the amount of income I impute to the claimant as his income for 2021 onwards.

Child Support

[149] Given the Guidelines incomes of the parties as I have determined them, the child support payable by the claimant to the respondent during the period from December 1, 2021 to the date of the trial was \$1,064 per month. The same amount is payable from the date of the trial going forward.

[150] The child support the claimant should have paid to the respondent for the period from December 2021 to April 2023, the month of the trial, is \$18,088, calculated as follows:

Period

Amount

Dec. 2021

\$1,064

Jan - Dec 2022

\$12,768

Jan- Apr 2023

\$4,256

Total

\$18,088.00

- [151] The respondent acknowledges that the claimant made child support payments of \$8,000 in total (\$3,000 in each of December 2021 and January 2022, and \$1,000 in each of May and June 2022). Accordingly, for the period from December 2021 to and including April 2023, the claimant is in arrears of child support in the amount of \$10,088 and owes this amount to the respondent.
- [152] Commencing May 1, 2023, and continuing on the first day of each and every month thereafter, the claimant is to pay child support to the respondent in the amount of \$1,064, until the child is no longer a child of the marriage.

Spousal Support

- [153] The respondent submits that she is entitled to spousal support on a compensatory basis because she has solely looked after Georgia and took on payment of all the household expenses post-separation. I do not agree.
- [154] The respondent gave minimal evidence justifying spousal support. When asked why an order for ongoing spousal support was needed, she replied that it would be difficult to provide for herself and Georgia on her own when having to pay for child care. Her response is a justification for child support and special expenses, not spousal support.
- [155] As indicated, compensatory spousal support is intended to provide redress for an economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. Neither are present here. The respondent did not give up her career as a nurse, and her career has not suffered as a consequence of the marriage. There is also nothing in the evidence suggesting that she conferred an economic advantage on the claimant. He worked as a drywaller before the relationship and continues to work as a drywaller, although it is unclear in what capacity he now does so. The respondent did have a temporary decrease in her earnings due to the birth of Georgia and her taking a maternity leave. However, she returned to work on a casual basis in December 2022, and returned to full-time employment in April 2023, when her maternity leave ended. The respondent has referred me to no authorities suggesting that the taking of a paid maternity leave gives rise to a claim for spousal support on a compensatory basis. In fact, the authorities suggest otherwise (See for example: *N.J.D. v. J.M.K.*, 2021 BCSC 1159 at paras. 65, 84; and *S.E.H. v. S.D.H.*, 2022 BCSC 1937 at paras. 140-145).
- [156] Although the respondent did not argue that she was entitled to support on a non-compensatory basis, I would add that no such claim has been made out. The financial circumstances of the respondent are currently significantly better than those of the claimant. She has a secure job, some financial assets and owns her own home. The claimant, in contrast, does not own a home and appears to have uncertain employment, although that may be of his own making.

[157] I would also add that, given the Guidelines incomes of the parties as I have determined them, if the respondent was entitled to spousal support, she would only receive support payments for 2022 in the mid-range amount of approximately \$1,000 per month. For the years 2021 and 2023 and going forward, the incomes of the parties are such that no support would be payable.

[158] Accordingly, I find that the respondent is not entitled to spousal support.

Distribution of Funds in Trust

[159] As indicated, there is \$253,046.59 in the trust account of Mullin DeMeo Wirk which represents the remaining balance of the proceeds from the sale of the Family Home. The claimant's share of these funds is \$126,523.30. However, he owes the respondent \$10,088 for retroactive child support for the period from December 2020 to April 1, 2023, and \$34,547 for the equalization payment ordered.

[160] I direct that the amounts owed for retroactive child support to April 1, 2023, and the equalization payment, are to be paid from the claimant's share of the proceeds held in trust.

[161] Additionally, given the claimant has not paid any support since June 2022, I presume he will not have made any child support payments for May 1 to October 1, 2023. The child support during that period totals \$6,384 (6 x \$1,064). This amount is also to be deducted from the claimant's share of the proceeds held in trust and paid to the respondent.

[162] With these deductions, the claimant will receive \$75,504.30 (\$126,523.30 - \$10,088 - \$34,547 - \$6,384) of the funds in trust and the balance will go to the respondent.

[163] The parties have liberty to apply to vary this distribution, if the claimant has made support payments subsequent to the trial.

Orders

[164] I make the following order for divorce:

Subject to s. 12 of the Divorce Act (Canada), the Claimant, Jason Richard Grisenthwaite, and the Respondent, Alyx Patricia Clavora, who were married at Victoria, British Columbia on May 4, 2019, are divorced from each other. The divorce to take effect on the 31st day after the date of this order.

[165] I make the following additional orders:

- a) The respondent will have all of the decision-making responsibility with respect to Georgia, under s. 16.3 of the Divorce Act.
- b) The respondent will have primary residence of Georgia and, under s. 16.2 of the Divorce Act, the claimant will have unsupervised parenting time as follows:

- i. Commencing immediately, the claimant will have parenting time of four hours each and every Saturday;
- ii. Commencing six months from today's date, the claimant will have parenting time of eight hours each and every Saturday.
- c) Either party may apply to review the parenting time of the claimant, without having to show a material change in circumstances.
- d) The respondent is permitted to travel internationally with Georgia without the consent of the claimant. In advance of the travel, the respondent is to provide the claimant with a travel itinerary, contact addresses, telephone numbers, and evidence of reasonable travel medical/health insurance coverage obtained for Georgia for the duration of the trip.
- e) The respondent may singly and without the consent or signature of the claimant and without consulting with the claimant apply to Immigration, Refugee and Citizenship Canada for a renewal or replacement of the passport for Georgia.
- f) The respondent is found to be a resident of British Columbia and is found to have a gross annual income of \$98,163 in 2021, \$36,300 in 2022, \$90,000 in 2023, and \$100,000 in 2024, for the purpose of calculating support payments.
- g) The claimant is found to be a resident of British Columbia and is imputed to have a gross annual income of \$117,000 for the purpose of calculating support payments.
- h) The retroactive child support due and owing by the claimant to the respondent for the period from December 1, 2021, to and including April 1, 2023, is \$10,088. This amount is to be paid from the claimant's portion of the funds held in trust by Mullin DeMeo Wirk.
- i) The claimant will pay to the respondent the sum of \$1,064 per month for the support of Georgia, born October 23, 2021, commencing on May 1, 2023, and continuing on the 1st day of each and every month thereafter, for as long as she is eligible for support under the Divorce Act or until further agreement of the parties or court order.
- j) The claimant will pay to the respondent a proportional share for the Georgia's special or extraordinary expenses. The parties' respective proportional shares are 54% for the claimant and 46% for the respondent. The following expenses will be special or extraordinary expenses:
 - i. Childcare expenses;
 - ii. Medical and dental expenses, including premiums for medical and dental insurance relating to the child; and
 - iii. Any other special or extraordinary expenses as set out in s. 7 of the Federal Child Support Guidelines.

- k) The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.
- l) Commencing in 2024, for as long as Georgia is eligible to receive child support, the parties will exchange:
 - i. copies of their personal income tax returns for the previous year, by May 31st of each and every year;
 - ii. copies of any Notices of Assessment or Reassessment provided to them by Canada Revenue Agency, immediately upon receipt; and
 - iii. the claimant will provide copies of his annual Corporate Financial Statements and corporate income tax returns for 0902619 B.C. Ltd. (Quality Victoria Drywall Ltd.).
- m) The Scotiabank RRSP in the name of the respondent and in the total amount of \$19,800 is to be equally divided by way of a spousal rollover. The parties shall execute all necessary documents to effect this rollover.
- n) The 2016 Sea-Doo and trailer that is currently in the possession of the respondent shall be delivered up to the claimant as his sole and exclusive property.
- o) The claimant's 20% interest in the 2008 Sea-Doo is hereby conveyed to the respondent as her sole and exclusive property.
- p) The Boston Bruins memorabilia currently in the possession of the respondent shall be delivered to the claimant as his sole and exclusive property. All other household appliances, furniture, chattels and items currently in the possession of the respondent shall be retained by her as her sole and exclusive property.
- q) The claimant shall pay to the respondent an equalization payment of \$34,547. This amount is to be paid from the claimant's portion of the funds held in trust by Mullin DeMeo Wirk.
- r) The respondent's pension with the Municipal Pension Plan - Island Health shall be divided equally between the parties for the period from November 28, 2014, to November 28, 2021.
- s) The funds currently held in trust by Mullin DeMeo Wirk shall be disbursed as follows:
 - i. \$75,504.30 to the claimant; and
 - ii. the balance to the respondent.
- t) The parties shall each be solely and exclusively responsible for any and all debts in their respective names
- u) All other claims before the Court are dismissed.

[166] The parties have leave to speak to me regarding the matter of costs, if necessary.

"Giaschi J."

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