

CANADA / JUDGMENT

Gron v. Gron

2021 BCSC 1375

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Supreme Court of British Columbia

DECIDED

13 July 2021

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2021 BCSC 1375 Gron v. Gron

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gron v. Gron,

2021 BCSC 1375

Date: 20210713

Docket: E19556

Registry: Duncan

Between:

Dawne Adele Gron

Claimant

And

Clinton Henning Gron

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Claimant:

M.L. Duggan

Counsel for the Respondent:

A.G. LaCroix

Place and Date of Hearing:

Victoria, B.C.

June 29, 2021

Place and Date of Judgment:

Duncan, B.C.

July 13, 2021

- [1] The parties were married on December 16, 2000.
- [2] There are two children of the marriage:
 - a) Danielle Carmen Gron, born May 19, 2001; and
 - b) Colton Richard Henning Gron, born January 21, 2005.
- [3] Meaning no disrespect to either, but for convenience, I will refer to Danielle Carmen Gron as Danielle, and to Colton Richard Henning Gron as Colton.
- [4] The parties separated on July 31, 2012, and thereafter the children initially resided half-time with each of the parties, on a one-week rotating basis.
- [5] The parties attended an arbitration to resolve various differences and an arbitration award was made on April 25, 2014. The award was incorporated into the order of Justice Armstrong dated February 23, 2015.
- [6] Since the order of Armstrong J., there have been ongoing issues and multiple court applications relating to the respondent's income and child support obligations.
- [7] On August 25, 2016, by the consent of the parties, the order of Armstrong J. was stayed by Justice Baird.
- [8] In February 2019 Danielle determined that she wanted to live only with the claimant, and the claimant says that she has done so since that time.
- [9] On November 4, 2019, by the consent of the parties, Justice Power granted an interim order lifting the stay ordered by Baird J. for the purposes of enforcing ongoing support and requiring that the respondent pay the claimant the sum of \$336 per month for child support.
- [10] Paragraph 1 of the order of Power J. provides:

By consent, on an interim without-prejudice basis to the relief requested by either party in their respective Notices of Application filed in this matter, the Respondent shall pay to the Claimant child support in the amount of \$338.00 per month commencing November 1, 2018 and continuing on the first day of the month thereafter until further order or agreement (hereafter the "Ongoing Support").

[11] Due to his attendance at a school that allows him to pursue his athletic interests, Colton started living full-time with the claimant on September 1, 2020.

[12] Both the claimant and the respondent have re-partnered.

Orders Presently Sought

[13] The claimant seeks the following orders:

1. The amount of child support as set out in paragraph 1 of the Order of the Honourable Madam Justice J. Power pronounced November 4, 2019 is varied as follows:
 - a. In order to reflect guideline support based on the actual parenting arrangements for Danielle Carmen Gron, born May 19, 2001 ("Danielle"), and Colton Richard Henning Gron, born January 21, 2005 ("Colton") (collectively the "Children"), and pursuant to the Family Law Act, the Respondent shall pay to the Claimant child support in the amount of \$801 per month, commencing retroactive to September 1, 2020, and continuing on the 1st day of each and every month thereafter until further agreement or order of the court, for as long as there is a "child" as defined by the Family Law Act.
 - b. In the alternative, if the Respondent's annual income has increased above the amount of \$42,000 non-taxable income (grossed up guideline income of \$49,629), then the Respondent shall pay to the Claimant child support for the Children in the appropriate guideline amount as determined by this Honourable Court, commencing retroactive to September 1, 2020, and continuing on the 1st day of each and every month thereafter until further agreement or order of the court, for as long as there is a "child" as defined by the Family Law Act.
2. Pursuant to the Family Law Act, the parties shall equally share special and extraordinary expenses for the Children as set out below:
 - a. The Claimant shall be responsible for paying the entire amount of \$1,430 to the Royal Bay Lacrosse Academy for Colton for the 2020-2021 school year;
 - b. On or before April 30, 2021, the Respondent shall pay a lump sum to the Claimant in the amount of \$715 in satisfaction of his one-half share of the Royal Bay Lacrosse Academy fees for Colton for the 2020-2021 school year;
 - c. On or before June 30, 2021, the Respondent shall pay to the Claimant a lump sum of \$842.27 in satisfaction of his one-half share of the expenses paid by the Claimant to date for Danielle's tuition and books at VIU;
 - d. The Claimant shall continue to pay up front for ongoing expenses for the Children relating to Danielle's attendance at Vancouver Island University and Colton's attendance at Royal Bay Lacrosse Academy; and
 - e. The Respondent shall reimburse the Claimant for his share of ongoing expenses on the following payment schedule:

- i. On or before October 1, 2021, the Respondent shall provide a lump sum payment of \$537.50 to the Claimant in satisfaction of his share of the Royal Bay Lacrosse Academy Fees for Colton for the 2021- 2022 school year;
- ii. On or before October 1, 2022, the Respondent shall provide a lump sum payment to the Claimant in the amount of \$537.50, or one-half of the Royal Bay Lacrosse Academy Fees, whichever is greater, in satisfaction of his share of the Royal Bay Lacrosse Academy Fees for Colton for the 2022-2023 school year;
- iii. Provided that Danielle commences with the Dental Assistant Program at Vancouver Island University in the fall of 2021, the following shall apply:
 1. On or before September 15, 2021, the Claimant shall provide the Respondent with proof of Danielle's enrollment in said program; and
 2. The Respondent shall provide payments to the Claimant in satisfaction of his share of the fees for said program as set out below:
 - a. A lump sum of \$1,800 payable on or before September 30, 2021; and
 - b. A further lump sum of \$1,800 payable on or before January 31, 2022.
 3. The parties shall:
 - a. put the best interests of the Children before their own interests;
 - b. encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
 - c. make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Children.
 4. The parties shall not:
 - a. question the Children about the other parent or time spent with the other parent beyond simple conversational questions;
 - b. discuss with the Children any inappropriate adult, court or legal matters; or
 - c. blame, criticize or disparage the other parent to the Children.
 5. The parties shall encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the Children concerning family issues or litigation.

6. On or before April 30, 2021, the Respondent shall provide to the Claimant proof that he has maintained his group life insurance policy in the amount of no less than \$200,000 and that he has designated the Claimant as the irrevocable beneficiary of it until Colton reaches the age of 19.
 7. Costs.
- [14] The respondent does not oppose the relief sought in paras. 2a through e inclusive, 3, 4 and 5, so I will grant those orders.
- [15] The relief sought in para. 6 of the claimant's application has been worked out between the parties and was not pursued before me.
- [16] The claimant contends that her medical coverage plan only covers dependents until age 19, she was unaware that the respondent's plan had coverage for unmarried children up to age 21, and when she learned of that she asked the respondent if he could re-enrol her on his extended benefits plan.
- [17] The respondent swore that "my partner Candace's and my benefits plans have extended medical and dental coverage for unmarried children up to the age of 21, and up to 25 if they are enrolled in school full-time, and therefore Danielle has had continued coverage by these plans".
- [18] In the result, I will focus these reasons for judgment on the submissions of the parties that addressed the relief sought in paras. 1 and 7 of the claimant's application.

The Positions of the Parties

- [19] The claimant contends that Danielle is unable to withdraw from her parents' charge, and should therefore be treated as a child of the marriage.
- [20] The respondent contends that Danielle is no longer a child of the marriage as that term is defined by subsection 2(1)(b) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), and contends that the evidence adduced by the claimant does not meet the onus upon her to justify the orders that she seeks in para. 1 of her application.

Legal Principles

- [21] Danielle turned 19 years-of-age on May 19, 2020.
- [22] The claimant, as the parent applying for a support order for a child over the age of majority, must establish that Danielle, though an adult, remains a "child of the marriage" as defined by subsection 2(1)(b) of the Divorce Act, and is, "by reason of illness, disability, or other cause, to withdraw from charge or to obtain the necessities of life."
- [23] In *Dring v. Gehyle*, 2018 BCCA 435 ("Dring") at paras. 49, 103, 104, Justice Goepel held that:

49 Once a child of the relationship reaches the age of majority, the presumption is that the child is no longer a "child" and child support is no longer required. At age 19, a child is an adult who, generally speaking, must support himself or herself. To remain a "child" for support purposes, the adult child must be unable to withdraw from his or her parents' charge, or unable to obtain the necessities of life because of illness, disability or another reason. Once a child reaches the age of majority, the party applying for child support bears the onus of proving that the child is still a child: *Olson v. Olson*, 2003 ABCA 56 at para. 13.

[emphasis by Goepel J.A.]

[24] In *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, Master Joyce, as he then was, set out the following factors to be considered in assessing whether a child attending school could be treated as a child of the marriage at pages 64-65:

Whether or not attendance in a post-secondary institution will be sufficient cause for a finding that the child is still a "child of the marriage" requires examination of all of the circumstances. It is not a conclusion which follows automatically from proof of attendance at the institution [*McNulty v. McNulty* (1976), 25 R.F.L. 29 (B.C.S.C.)]. In my view the relevant circumstances include:

- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
- (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
- (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
- (4) the ability of the child to contribute to his own support through part-time employment;
- (5) the age of the child;
- (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
- (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
- (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[25] In *W.P.N. v. B.J.N.*, 2005 BCCA 7, Justice Levine, for a unanimous Court, observed at para. 18 that:

The pursuit of education necessary to equip a child with a career qualifies as "other cause" for continuing dependence of a child of or over the age of majority: *Martin v. Martin* (1988), 26 B.C.L.R. (2d) 390 at 393 (C.A.). In determining whether a child pursuing an education is unable to withdraw from her parents' charge or obtain the necessities of life a court must consider the surrounding circumstances; mere attendance at an educational institution is not sufficient: *Ciardullo v. Ciardullo* (1995), 15 R.F.L. (4th) 121 at para. 17 (B.C.S.C.).

[26] In *Neufeld v. Neufeld*, 2013 BCCA 178 at para. 17, Justice Groberman commented:

17 This Court has found the Farden factors to be useful indicators in deciding whether child support should continue to be paid in respect of a child over the age of majority who is attending a post-secondary institution (see, for example, *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406; *W.P.N. v. B.J.N.*, 2005 BCCA 7 and *De Beck v. De Beck*, 2012 BCCA 465). It must be emphasized, however, that the Farden factors are neither a checklist nor a set of statutorily-mandated criteria. Rather, they are considerations for the court in assessing whether the child's situation is consistent with the definition of "child of the marriage" in the Divorce Act.

[27] At para. 103 in *Dring*, Goepel J.A. held, in part:

The legal test is whether or not the Son is unable for some reason to obtain the necessities of life or withdraw from the charge of his parents. As was made clear by Justice Levine in *Neufeld*, mere attendance at an educational institution is not sufficient. If the mere attendance at an educational institution was sufficient, the Farden factors which the courts have long used to assist in determining whether an adult pursuing an education remains a "child" would be of no import.

[emphasis by Goepel J.A.]

[28] The legislative framework for determining child support for children over the age of majority is set out in Section 3(2) of the Federal Child Support Guidelines, SOR/97-175 ("Guidelines") made pursuant to s. 26.1 of the Divorce Act which provides:

Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[29] In *Wesemann v. Wesemann*, [1999] B.C.J. No. 1387, ("Wesemann") (later approved of by the Court of Appeal in *Neujeld v. Neujeld*, 2005 BCCA 7 ("Neujeld")) at para. 6, Justice Martinson set out a four-part test for determining whether the Guidelines should be followed in a situation where an adult child is attending a post-secondary institution:

6 The law with respect to support for children over the age of majority can be looked at as a four-step procedure:

Step One

Decide whether the child is a "child of the marriage" as defined in the Divorce Act? If s/he is not, that ends the matter.

Step Two

Determine whether the approach of applying the Guidelines as if the child were under the age of majority ("the usual Guidelines approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual Guidelines approach.

Step Three

If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual Guidelines approach is inappropriate. If not, the usual Guidelines amount applies.

Step Four

If the usual Guidelines approach is inappropriate, decide what amount is appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child?

[30] In *Neujeld*, the court held that it was usually more appropriate for support to be determined under s. 3(2)(b) of the Guidelines, and in *Wesemann* at para. 22 the court found that university students are expected to contribute a reasonable amount to their own expenses.

[31] With respect to the second step, *Martinson J.* held in *Wesemann* at para. 12:

12 If there is no challenge to the usual Guidelines approach the amount payable is determined under the Guidelines in the same way it is decided for a child under the age of majority. This can be the table amount, the table amount plus an amount for extraordinary expenses for post secondary education based on s. 7 of the Guidelines or an amount for post secondary education only based on s. 7 of the Guidelines: *Whitley v. Whitley*, [1997] B.C.J. No. 3116 (QL) (S.C.).

[32] In determining whether the pursuit of post-secondary education is a valid reason for a continued dependence after reaching the age of majority, the court in *Nordeen v. Nordeen*, 2013 BCCA 178 at para. 16 determined the Court must consider two questions:

- (a) whether the child's educational pursuits are reasonable in all of the child's circumstances, and
- (b) if so, whether it is appropriate that the child's education be financed by his/her parents.

[33] Justice *Martinson* addressed these considerations in *Wesemann*, at paras. 22-25:

22 Post secondary education is a privilege, not a right: Whitley (at para. 21). Children have an obligation to make a reasonable contribution to their education. However, just because a child is earning income, it does not follow that all of that income must be applied to the child's education. The desirability of allowing the child to experience some personal benefit from the fruits of his or her labours should also be considered: Glen v. Glen (at para. 14).

23 It is a notorious fact that post secondary education fees are high and well paid employment for students is scarce: Darlington (at para. 17).

24 It may well not be appropriate to require a child to work part-time during the school year in addition to summer employment as that might interfere with the child's studies and ability to pass: Darlington (at para. 17); Palmer v. Palmer, [1998] B.C.J. No 2092 (QL) at para. 15 (S.C.).

25 Nor should the availability of student loan money automatically require the child to obtain the loan. To see a student loan as simply income available to a child is a fundamental misunderstanding of the nature, implications and financial obligations of a loan to that student. A student loan is not a bursary, grant or scholarship fund, designed to defray a student's expenses. Rather, a student loan delays payment of certain expenses, rather than defraying them: Palmer (at para. 16).

[34] In Gasparini v. Gasparini, 2014 BCSC 1465 ("Gasparini") at para. 51, Justice Pearlman held that a 19-year-old who had been out of high school for two years, resided with her mother, had restricted her studies to one online course in each semester, and was capable of working full-time and fulfilling the requirements of her part time studies, had ceased to be a child of the marriage. The court further noted that in the event she increased her level of part-time study or became a full-time student, "...then her status as a child of the marriage may be revisited, together with the question of her contribution, and that of her parents to the cost of her education and living expenses for post-secondary studies".

[35] Where an applicant has adduced no evidence of an adult child's ability to contribute towards her living and post-secondary expenses, the court cannot determine whether the child is a child of the marriage. In Liu v. Hargreaves, 2015 BCSC 2159, Master Muir dismissed an application for child support for a child who was over the age of 19, commenting at paras. 49-51:

49 There is no evidence of what Alycia is capable of earning part-time, nor is there evidence of her expenses, and how much support she is receiving from her boyfriend.

50 The respondent referred me to the reasons of Mr. Justice Truscott in Innes v. Innes, 2011 BCSC 722:

[27] I find myself unable to order continuance of the child support order for the fourth child in any amount beyond the respondent's last payment in November 2010, without any evidence of what that child can contribute himself towards his expenses.

[28] Without this evidence it would be unfair to the respondent in my view to impose any further obligation on him when the appropriate amount of any ongoing child support is to be determined on consideration of the "child's" efforts to contribute to his own support.

51 Here, too, I am not satisfied on the evidence that Alycia remains a child and dependent on support from her parents. I, therefore, conclude that Alycia ceased to be a child within the definition of the FLA on November 30, 2013, and that the respondent's obligation to provide child support therefore ceased on that date, and I so order.

Discussion

[36] The claimant concedes that Danielle was not in school from July 2020 to December 2020 but asserts that when she graduated from high school in 2019, the COVID-19 pandemic was affecting the economy and Danielle was still deciding what she wanted to do for post-secondary studies, and was in no position to become financially independent.

[37] The respondent asserts that Danielle ceased residing with the claimant in or about March 2020 and was residing primarily with her boyfriend in Crofton, British Columbia, until late March or early April, 2021, when she and her boyfriend separated and she moved back to live with the claimant.

[38] The claimant counters this assertion by her evidence that Danielle did not start dating her boyfriend until August 2020, and continued to do so until April 2021. She concedes that throughout this period of time, there were some nights when Danielle stayed at her boyfriend's residence overnight, and some when the boyfriend would stay at her residence overnight, but said that even during this time, Danielle was home every day and her belongings never left her house, nor did she reside elsewhere, including with her boyfriend.

[39] I accept the claimant's evidence with respect to her daughter's residency and find that Danielle has continued to live with the claimant since she graduated from high school.

(a) Farden Factors

[40] The respondent argues that Danielle completed high school in June 2019 and worked at Starbuck's Coffee on Trunk Road, Duncan, since her graduation, but there is no issue that the respondent was obliged to provide child support for Danielle until she turned 19 in May of 2020.

[41] The claimant asserts that Danielle was enrolled at Vancouver Island University ("VIU"), upgrading her Biology 12 and taking some entry level online classes, because those classes were all that were offered due to the COVID-19 pandemic. Danielle completed those courses in May 2021 and is hoping to start the VIU Dental Assistant Program in September 2021.

[42] From June of 2019 until this year, Danielle was not enrolled in any course of studies, and has not been so enrolled since completing her online courses. But for the time studying online this year, Danielle has not, and does not, meet the first Farden factor since her 19th birthday.

- [43] It is the respondent's view that Danielle has the ability to contribute to or pay all of her education expenses from her own savings, earnings or student loans. It is his evidence that Danielle has not approached him to request financial assistance with her education or otherwise. I am not persuaded that the lack of her approach to the respondent is because Danielle does not want or need financial assistance from her father.
- [44] In her affidavit of May 12, 2021, the claimant stated that most of Danielle's income from part-time employment went toward gas and car insurance, and that throughout a large period of 2020 she was unable to work because of the pandemic and its effect on hours available to her at Starbuck's, as her store was closed entirely for several months, and even when it re-opened, her hours were limited.
- [45] The claimant also asserts that Danielle had to work around her schedule while attending online classes at VIU starting in January 2021.
- [46] I do not accept that Danielle was without financial resources from May of 2020 until she began attending online classes earlier this year. At a minimum, she could have received either income from Starbuck's while it remained open, and obtained Canada Emergency Response Benefits once the Starbuck's store was closed.
- [47] Insofar as Danielle's ability to assist in the cost of her studies, the claimant said in her affidavit of May 21, 2021 that to the best of her knowledge, Danielle does not qualify for student loans because she is still financially dependent on her parents and is not an independent student.
- [48] There is no evidence that Danielle has applied for loans or assistance to enable her to pursue her studies, and I am not prepared to accept the claimant's assumption that she cannot obtain such funding or assistance. She therefore does not meet the second Farden factor.
- [49] The claimant's evidence, which I accept on this point, is that Danielle has met the admission requirements for the Dental Assistant Program and is now waiting to find out whether a space will be available for her. If a spot is available, she will begin this Program in September 2021 and continue in it for 10 months, completing it in June of 2022.
- [50] I am prepared to accept that Danielle does have a career plan to pursue training and employment as a dental assistant. She has secured present employment at a dental office, although she is not yet qualified to act as a dental assistant. This satisfies me, however, that she does have such a goal and satisfies the third Farden factor.
- [51] The claimant further asserts that if Danielle is accepted into the Dental Assistant Program, she will not be able to work until that Program has completed, and that she does not expect that Danielle will have any funds of her own to contribute toward the fees that will be charged by VIU, so proposes that she and the respondent share that cost equally.

- [52] Notwithstanding this assertion, in her affidavit of May 12, 2021, the claimant stated that even if Danielle is able to pick up a few shifts during school breaks, that money will be needed for her vehicle as she will be driving back and forth to classes at the Nanaimo VIU campus every day.
- [53] Neither the claimant nor Danielle have disclosed Danielle's income or expenses to the respondent or to the Court. Without doing so, the claimant asserts that although Danielle has been working part-time, the majority of the money that she earns goes toward paying for gas and her car insurance.
- [54] The respondent swore that Danielle advised him that she was to start working in a dental practice on June 14th of this year at a wage of roughly \$19.50 an hour, working roughly 36 hours a week from 7:30 to 4:30. He also swore that Danielle advised him that she is going to continue to work on the weekends at Starbucks for some period of time to help out as they do not have enough senior employees and so she will stay as needed for some part-time work.
- [55] The claimant has not satisfied me that the fourth Farden factor is met.
- [56] The fifth Farden factor does not assist in this case, and it is premature to determine if the sixth Farden factor is of assistance.
- [57] There is an absence of evidence as to the seventh Farden factor, and the respondent denies that Danielle has unilaterally or otherwise terminated her relationship with him. He swore that due to his severe health problems, since the onset of COVID in March 2020, he and Danielle have had very little physical contact, but they still have a close relationship and maintain contact through texting and telephone calls as well as occasional visits, thus satisfying the eighth Farden factor.
- (b) Wesemann Steps
- [58] As in *In Gasparini*, Danielle may increase her level of study to full-time in September of this year and then her status as a child of the marriage may be revisited, together with the question of her contribution, and that of her parents, to the cost of her education and living expenses for post-secondary studies.
- (c) Conclusion on Danielle's Status
- [59] Applying the Farden factors, I find that with the exception of the period from January to April 2021 inclusive, Danielle is not and has not been a "child of the marriage" as defined by the Divorce Act. It is therefore unnecessary for me to apply the second, third or fourth steps set out by *Martinson J.* in *Wesemann*.
- (d) The Claimant's Application for Variation of the Order of Power J.

- [60] The claimant contends that since Danielle began living with her on a full-time basis, the respondent has refused to pay her child support for Danielle. She says that after she filed a court application, the respondent agreed to pay Guideline child support of \$336 per month, commencing November 1, 2019 but not retroactive to February 2019 when the parenting schedule changed.
- [61] The claimant accepts that the respondent is not working and receives a fixed amount of non-taxable disability income per month. When he started receiving disability several years ago, his non-taxable income was \$42,000 per year, resulting in a grossed-up amount of \$49,629. The claimant gave evidence that she does not know whether this amount has increased since that time, but based on the prior amount, the Guideline child support amount for the two children would be \$775 per month.
- [62] She therefore seeks an order for Guideline child support in this amount, or in a recalculated amount if the respondent's income is actually higher than before, applied retroactively to September 1, 2020 when Colton started living with her full-time.
- [63] The respondent swore that he is presently receiving disability benefits because he has been ill since 2015. It is his evidence that he was initially diagnosed with interstitial cystitis, a disabling pain condition also known as pelvic pain syndrome, and was diagnosed with incurable multiple myeloma, a cancer of the blood plasma, roughly two years ago. He asserts that he has significant ongoing pain as the condition has resulted in the deterioration of his spine, and that he takes pain medication including hydromorphone and methadone. It is his evidence that he had an esophageal surgery related to his condition and has had a surgical procedure on his spine because his vertebrae are deteriorating, with another procedure to be scheduled.
- [64] In his affidavit sworn May 15, 2021, the respondent stated:
27. My income has not changed and my income in 2020, including taxable benefits, was \$43,367.76 as set out in my current Financial Statement I received taxable Canada Pension disability benefits totalling \$14,454.60 in 2020, which includes the taxable portion of benefits, and \$28,914.36 (\$2,409.43/mo) from my Canada Life (previously Great West Life) disability pension. Now shown to me and marked as Exhibit "L" is a copy of a letter from Great West Life dated August 21, 2014 confirming:
- (a) my maximum LTD benefits are \$3,500 per month;
 - (b) my LTD benefits are non-taxable and no T4A will be issued for these benefits; and
 - (c) other disability, including Canada Pension Disability benefits, will effect [sic] the amount of LTD benefits I receive.

28. Based on my 2020 income, grossed up for my Canada Life benefits, my income is \$51,403, which would result in a child support payment for one child of \$483/ month. Now shown to me, attached hereto and marked as Exhibit "M" is a DivorceMate child support calculation based on my Annual Guideline Income of \$51,403 showing my monthly child support obligation for one child is \$483 per month.
- [65] The respondent contends that the claimant resides with her common law partner in a residence registered in her partner's name, in Mill Bay, British Columbia. He asserts that she has deliberately chosen to be underemployed, and work on a part-time basis, while full or close to full-time employment at her existing wage level is available to her, and thus seeks to have income imputed to her.
- [66] The respondent argues that the claimant has consistently worked on a part-time basis even though she has union seniority and is capable of working on a full-time or close to full-time basis. He contends that she should be imputed with a full-time income based on her hourly wage for the purposes of determining child support obligations, including the sharing of special and extraordinary expenses.
- [67] The respondent argues that the claimant has the ability to increase her income by working full-time and such full-time work should be available to her based on her union seniority. Her employment history since 2016, based on the information contained in her Financial Statement, is as follows:
- a) 2016 - \$41,329;
 - b) 2017 - \$36,730;
 - c) 2018 - \$48,290;
 - d) 2019 - \$50,087; and
 - e) 2020 - \$52,530.
- [68] The respondent contends that based on the claimant's year-to-date income, she has the ability to earn \$57,664 per year, and that any section 7 expenses for Colton or Danielle should be shared in proportion to his and an imputed income to the claimant.
- [69] The claimant's Form 8 discloses 2020 employment income of \$51,621.56, which is approximately \$10,000.00 more than her 2018 and 2019 employment incomes, which in turn were significantly higher than her employment income in prior years. However, her Form 8 does not attach any relevant 2020 documentation verifying the claimant's 2020 income by way of a copy of her 2020 tax return or any 2020 tax receipts or pay statements.

- [70] In her May 12, 2021 affidavit, the claimant stated that her income was higher than average in 2020 because she received bonuses as well as extra pay and taxable benefits because of the COVID-19 pandemic. She said that she received those bonuses and extra pay and taxable benefits because she is an essential worker at a grocery store but that such amounts were an anomaly and she does not expect these increases to continue in the future.
- [71] The claimant's pay statement for the period ending March 6, 2021 attached to her Form 8 shows her year-to-date income at \$12,930.12. Based on the statement, the claimant worked more than 40 hours during that week, and the respondent contends that this shows that full-time employment is available to the claimant. He contends that even without statutory holidays, or weekend/evening shifts, based on a 40-hour week at straight time of \$28.16/hour, the claimant is capable of earning \$58,573 per year.
- [72] The respondent argues that based on her year-to-date income, the extrapolated amount of the claimant's 2021 annual income would be approximately \$74,700, but if the taxable year-to-date income of \$11,699 is used, the claimant's 2021 annual income would be approximately \$67,595.
- [73] I am not prepared to impute 2020 income for the claimant beyond the amount of \$52,530 set out in her Financial Statement.
- [74] In the result, the respondent's Guideline income for 2020 is \$51,403, and that of the claimant is \$52,530 for that year.
- [75] The plaintiff must pay child support to the claimant for Danielle based upon these respective incomes, for the months of January through April 2021 inclusive, on the basis that she resided with the claimant on a full-time basis throughout, and was pursuing online coursework to facilitate her acceptance into the Dental Assistance Program.
- [76] The respondent must also pay child support to the claimant for Colton based upon these respective incomes starting on September 1, 2020, on the basis that he resided with the claimant on a full-time basis thereafter.
- [77] The parties can determine the applicable child support owing by the respondent to the plaintiff pursuant to the Guidelines.
- [78] If the parties are unable to determine the amounts owing from June 1, 2018 to date, they may file written submissions of no more than five pages in length setting out their respective positions, and I will make the determination.
- (d) Special or Extraordinary Expenses for Danielle
- [79] The claimant argues that while Danielle was completing her online courses, she paid \$1,684.54 for Danielle's tuition and books.

- [80] The respondent swore that while the claimant deposed that she paid that amount for tuition and books for Danielle, it appears the tuition totalling \$942.76 was to be paid in instalments with the first instalment of \$91.86 being due January 20, 2021, so the total paid by the end of March for tuition would have been less than \$300, and the claimant has not provided any documentary evidence by way of receipts, bank records or otherwise to verify she paid any tuition or other education expenses for Danielle.
- [81] The respondent complains that the claimant has provided no supporting documentation respecting the education expenses she alleges she has incurred for Danielle to date by way of receipts or proof of Danielle's enrolment or application for enrolment at Vancouver Island University in the Dental Assistance Program.
- [82] Such a submission is disappointing, as the claimant has provided receipts for the updating courses, and evidence about the costs of the Dental Assistance Program. The submission thus smacks of obstructionism, and I reject it.
- [83] Although the receipts were made out to Danielle, I accept that the claimant funded those expenses, and that the respondent has refused to contribute toward any portion of them.
- [84] I find that the respondent must pay to the claimant his share of these expenses, based upon the parties' respective incomes set out in para. 74 above.
- [85] The claimant asserts that if Danielle is accepted to the Dental Assistant Program, the fees including tuition, books, and other mandatory costs will amount to approximately \$7,199.27. I find that it is premature to address these anticipated expenses.
- [86] The claimant is at liberty to apply for a variation of her child support entitlement if and when Danielle begins her studies as a Dental Assistant.
- [87] The respondent is granted liberty to apply for a variation in his child support obligations upon receipt of the claimant's 2021 income tax return, which is to be provided to him by the claimant on or before May 31, 2022.
- (e) Costs
- [88] Success has been divided on the contested parts of the application before me, so the parties will bear their own costs of the application.

"The Honourable Chief Justice Hinkson"

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