

CANADA / JUDGMENT

## Hagen v. Hagen

2025 BCSC 807

### COURT

Supreme Court of British Columbia

### DECIDED

30 April 2025

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2025 BCSC 807 Hagen v. Hagen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hagen v. Hagen,

2025 BCSC 807

Date: 20250430

Docket: E140398

Registry: Kelowna

Between:

Shandel Rosalie Hagen

Claimant

And:

Eyvind Richard Hagen

Respondent

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant:

T. Eaves

The Respondent, appearing in person:

E. Hagen

Place and Date of Hearing:

Kelowna, B.C.

February 28, 2025

Place and Date of Judgment:

Kelowna, B.C.

April 30, 2025

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**Introduction**

[1] These reasons address the issues argued at a hearing on February 28, 2025 in Kelowna (the "Hearing"), during which I heard submissions on two applications.

- [2] There are two children of the marriage: a boy, A.H., born 2016, currently 8 years old, and a boy, O.H., born 2018, currently 6 years old (collectively, the "Children"). Since September/October 2024, the parties have been in a shared parenting arrangement.
- [3] In the claimant's notice of application filed on November 6, 2024, she sought the following orders, which were partially varied at the Hearing:
1. The respondent's income be imputed to \$100,000 per annum, or such other amount as the Court deems appropriate for interim child support and interim spousal support;
  2. The claimant's income be imputed to \$48,000 per annum, which was varied in oral submissions to \$21,000 per annum;
  3. Interim child support be paid by the respondent to the claimant in the amount of \$1,181 per month, or alternatively \$770 per month;
  4. Interim spousal support be paid by the respondent to the claimant in the amount of \$983 per month, or alternatively \$299 per month;
  5. The claimant will have exclusive occupancy of the home located at 2772 Canyon Crest Drive, West Kelowna, BC (the "Family Residence") and possession of the personal property contained therein, until further order of this Court;
  6. The respondent be prohibited from entering the Family Residence other than upon express written consent of the claimant;
  7. The claimant will collect the rental income from the tenants located in the self-contained suite of the Family Residence, and 2551 Delray Road, West Kelowna, BC (the "Delray Road Property") and apply the rental income to the following family debts:
    - a. The first mortgage on the Family Residence of \$2,453.13 per month;
    - b. The mortgage on the Delray Road Property of \$2,024.93 per month;
    - c. Any utilities on the Delray Road Property; and
    - d. Any remaining amount toward the second mortgage on the Family Residence.
  8. The claimant and respondent will each be equally responsible for 50 percent of the property taxes and home insurance payments for the Family Residence and the Delray Road Property when they come due;
  9. The respondent will produce documentation for the purchase of the mobile home located at 202-1966 Ross Road, West Kelowna, BC within 14 days of this order;
  10. The respondent will pay to the claimant the sum of \$1,048.45 pursuant to the terms of the Judicial Case Conference order made August 16, 2024 (the "JCC Order");

11. The respondent will pay a fine of \$5,000 for non-compliance with and breaching terms 3, 5 and 10 of the JCC Order;
  12. Upon the sale of the Family Residence the net sale proceeds will be placed into the trust account of Connect Family Law, counsel for the claimant;
  13. The respondent's signature be dispensed with; and
  14. Costs, payable forthwith.
- [4] In the respondent's notice of application filed December 9, 2024, he sought the following orders, which were varied at the Hearing:
1. Production of financial records for Robinhood Contracting, varied to the production of the 2024 T1 return when it is filed;
  2. Production of the Child Benefit Payment the claimant is receiving and the correction with the CRA - the respondent confirmed this issue had been addressed;
  3. The claimant instructs the tenants of the Family Residence to begin sending 50 percent of their rental payments to the respondent;
  4. The family debt, excluding the first mortgage on the Family Residence, be paid 50 percent by each party;
  5. There be a mediation with a mediator to be selected within 14 days and both parties will attend to discuss and make a settlement agreement, a parenting agreement, and a fair division of assets;
  6. The property exclusion claim set out in the claimant's financial disclosure for Sandstone Crescent be struck;
  7. The claimant includes on her 2024 tax filings the rental income received from the Family Residence and Investment Property; and
  8. For the claimant to pay occupational rent of \$1,500 to the respondent or an amount the Court deems appropriate.
- [5] The respondent was acting on his own behalf.

#### Relevant Background

- [6] Based on the evidentiary record before me, the following is a summary of the relevant background.
- [7] The claimant and respondent began to live together in a marriage-like relationship around the summer or fall of 2011, were married on June 1, 2013, and separated on October 1, 2023.
- [8] They are co-owners of the Family Residence and the Delray Road Property.

- [9] The claimant explains that when she met the respondent she was doing contracting and subcontracting work through her sole proprietorship, Robinhood Contracting. She did various work through Robinhood Contracting such as framing, putting in basements, and swapping out flooring.
- [10] The respondent was doing similar work and then began doing mainly framing-type work through another company, under a sole proprietor called EH Contracting.
- [11] After they got married in June 2013, the parties decided to operate one business together under Robinhood Contracting. Together, they would frame houses. The claimant says that the respondent was responsible for paperwork, bookkeeping, project quoting, invoicing clients, payroll, communication with general contractors, networking for future projects, and working as a full-time framer. She also worked as a full-time framer.
- [12] In the spring of 2014, the claimant and respondent stopped work with Robinhood Contracting and became employed by Azzano Construction, as framers, with the respondent running the crew and the claimant working as a member of the crew.
- [13] In January 2015, the claimant stopped working for Azzano Construction since the parties had decided to take foster children into their home and in particular, were looking after five children who stayed with them until January 2016. The claimant also became pregnant with their son.
- [14] The respondent continued to work for Azzano Construction until the summer or fall of 2015. He then began working as a project manager for Harmony Homes until November 2016. He quit Harmony Homes and took some time off. In the early spring of 2017, he returned to Robinhood Contracting to run a framing crew. He continued working for Robinhood Contracting as an employee until March 2024.
- [15] The claimant asserts that from the spring of 2017 until approximately the spring of 2023, the respondent was responsible for all aspects of Robinhood Contracting, including providing quotes for framing projects, hiring and firing employees, doing payroll, attending to the payment of tax installments, the bookkeeping, invoicing clients, management of tools and equipment, networking, and working as a framer.
- [16] The claimant asserts that from the spring of 2017 to approximately the spring of 2023 she was a stay-at-home mother caring for up to 10 foster children and also caring for other children in the Family Residence.
- [17] In the spring of 2023, the respondent advised that he did not want to work framing through Robinhood Contracting but wanted to flip houses instead. The claimant understands that the respondent started training one of the employees to look after the business.

- [18] In 2023, the respondent incorporated 139727 B.C. Ltd. ("1397") for the purpose of flipping houses. He purchased a mobile home with a partner, using credit from the Family Residence and the Delray Road Property. This mobile home has been sold and the proceeds divided.
- [19] In the spring of 2023, the claimant provided some assistance to the respondent with Robinhood Contracting helping with data entry, handwriting receipts, and running errands. She claims she was not paid for these services.
- [20] The parties separated in October 2023. The claimant alleged that the respondent took the business paper, current files and computer for Robinhood Contracting with him when he left.
- [21] By March 2024, the contracting jobs that Robinhood Contracting had were completed. The claimant changed the online business banking passwords and started to take over the payroll. By the end of March 2024, Robinhood Contracting did not have any employees and was not working as a framing company. Since the end of March 2024, the claimant has been using Robinhood Contracting for a painting and renovation business.
- [22] The claimant says that throughout the relationship she was a stay-at-home mother caring for the Children, with primary responsibility for caring for the foster children groups that came through their home.
- [23] The parties are joint owners of the Family Residence and the Delray Road Property. The Delray Road Property is rented to tenants and the Family Residence has a rental suite which is also rented to tenants.
- [24] From the date of separation to approximately September 2024, the Children lived primarily with the claimant, with reasonable parenting time with the respondent.
- [25] On September 16, 2024, the parties signed a shared parenting schedule agreement (the "Agreement") which provided for:
- Sunday at 6 p.m. until Tuesday at 8:30 [a.m.] with the respondent
  - Tuesday at 8:30 a.m. until Friday at 8:30 a.m. with the claimant
  - Friday at 8:30 a.m. until Tuesday at 8:30 a.m. with the respondent
  - Tuesday at 8:30 a.m. until Sunday at 6 p.m. with the claimant

### **The schedule will repeat every two weeks**

- [26] The Agreement provided that on November 1, 2024 there would be a review of the parenting time schedule. It is not clear on the evidentiary record before me whether such a review took place.

## Family Law Proceedings

- [27] On May 16, 2024, the notice of family claim was filed, seeking claims for divorce, parenting, spousal and child support, and division of family property and debt.
- [28] On July 30, 2024, a response to family claim and counterclaim was filed by the respondent with counsel.
- [29] The parties have filed financial statements with the respondent filing his on July 30, 2024 and the claimant filing hers on August 1, 2024.
- [30] The respondent's financial statement indicates that he is self employed as a carpenter and has a child support guideline income of \$54,769.22. The income included rental income of gross \$39,000 and net \$11,775.72 derived from the rental of the Delray Road Property.
- [31] The claimant's financial statement indicates that she is currently collecting all rental income from the Family Residence and the Delray Road Property and is primarily responsible for making all payments relating to three mortgages, two secured lines of credit, property taxes, insurance, repairs, and utilities. The total rental income is \$5,350, but she states the expenses exceed the rental income. She has started to do some sub-contracting work through her sole proprietorship and she estimates her total income currently and anticipated work, at about \$4,000 gross per month. She provides her child support guideline income at \$48,000. She lists excluded property being: \$198,000 from the sale of 2979 Sandstone Drive, West Kelowna (the "Sandstone Property"), which sold in September 2014, and a \$10,000 inheritance deposited into the parties' joint account in May 2019.
- [32] The judicial case conference occurred on August 16, 2024, before Justice Majawa, and the following orders were made by consent:
1. The net sale proceeds from the sale of a mobile home located at 1929 Highway 97 will be paid into trust with FH&P Lawyers;
  2. The division of the net sale proceeds from the sale of the mobile home;
  3. Both parties will be equally responsible for the monthly interest payment on the joint RBC Line of Credit ending in 6996;
  4. On a without prejudice basis, the respondent is to pay the claimant \$851 per month in child support for the Children, commencing September 1, 2024, and continuing the 1st day of each month thereafter until further court order or written agreement;
  5. Certain conduct orders pertaining to the Children;
  6. Respondent to pay the claimant \$520 for prior daycare expenses; and
  7. The parties to share equally upcoming dental expenses for the Children.
- [33] At the JCC both parties were represented by counsel.

[34] On September 4, 2024, the respondent filed a notice of intention to act in person.

[35] There have been no trial dates set, examinations for discovery have not occurred, and lists of documents have not been exchanged.

## Issues

[36] The notices of application and submissions raise the following issues:

1. What income should be imputed to the respondent for the purposes of support?
  2. What income should be imputed to the claimant for the purposes of support?
  3. What child support should be paid?
  4. Is the claimant entitled to interim spousal support, and if so, in what amount?
  5. Should the claimant have exclusive occupancy of the Family Residence?
  6. Who should collect the rent on the Family Residence and Delray Road Property, and what use should be made of the rental income collected?
  7. Who should be responsible for the annual property taxes and home insurance on the Family Residence and Delay Road Property?
  8. Should the respondent be required to produce documents relating to the sale of a mobile home at 202-1966 Ross Road, Kelowna?
  9. Should the respondent be ordered to pay the claimant \$1,048.45 as required by the JCC Order?
  10. Should the respondent pay a fine of \$5,000 pursuant to s. 228 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]?
  11. Upon the sale of the Family Residence what should happen to the net sale proceeds?
  12. Should an order to mediate be made?
  13. Should an order striking from the claimant's financial statement the property exclusion of \$198,000 for the Sandstone Property be made?
  14. Should the Court order that the claimant include on her 2024 tax filings the rental income from the Family Residence and the Delray Road Property?
  15. Should the claimant pay occupational rent of \$1,500 per month for living in the Family Residence?
  16. What costs order should be made?
- [37] I shall address each of the issues individually setting out, where necessary, the relevant facts, the parties' positions, the relevant law, and then my analysis.

Issue 1: What income should be imputed to the respondent for the purposes of support?

Relevant Facts

[38] The respondent is a red seal carpenter.

[39] The respondent sets out in his financial statement that his annual income is \$54,769.

[40] His tax returns for 2021 to 2023 show the following income:

- 2021 - \$113,356 (\$18,636 in other employment income, \$6,600 in net rental income, \$8,064 in capital gains, and \$80,056 in self-employment income)

- 2022 - \$89,650 (\$64,761 employment income, \$24,889 investment income)

- 2023 - \$92,427 (\$37,812 employment income, \$11,775 net rental income, \$42,840 net self-employment income)

[41] The rental income reported was from the Delray Road Property in 2021 and 2023. In 2022, there was a loss from the rental of the Delray Road Property.

[42] The respondent says his actual income from 2024 will be:

- \$10,993.50 - from Robinhood Contracting income

- \$10,000 - dividend from 1397

- \$10,027.51 - Degroot employment income

Total: \$31,021.01.

[43] As of February 2025, the respondent has been working for Don Neuman. He is an employee of a company owned by Ms. Chadsey, his current partner. At the Hearing, he advised that he was currently earning \$50/hour working 20 hours a week. The respondent claims that this job is almost completed and he is looking for another job.

[44] The respondent is also involved in flipping properties. He currently has a property for sale which he anticipates earning \$30,000 from, which he will be splitting with his girlfriend.

[45] The respondent claims that his body is "too worn to perform the role" of a framer for too long, he suffered an acute injury moving an air conditioner that has left a permanent pain in his lower back, and that he was involved in a rear-end accident in November 2023 that has resulted in additional lower back pain and chronic neck pain. The claimant says that the respondent "tweaked" his back while moving an air conditioner in 2019, but was able to continue to work despite this. There was no claim made on his disability policy at the time.

## Parties' Positions

- [46] The claimant says that \$100,000 should be imputed to the respondent on the basis that when you consider his past income and the income splitting that was shown on the claimant's tax returns, it shows that the respondent has the ability to make more than \$100,000.
- [47] The respondent submits that to impute an income of \$100,000 to him would be a gross mischaracterization of the income that he earned when he was living with the claimant. When they were living together he was managing Robinhood Contracting, but that ended. He submits that his income should be under \$40,000 since that is what he has earned post-separation.

## Legal Principles

- [48] Section 19(1)(a) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] allows for imputing income where a party is intentionally underemployed or unemployed. Under s. 19(1)(a), the court considers a party's capacity to earn income, and whether the party is not earning to capacity: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Koch v. Koch*, 2012 BCCA 378.
- [49] The party seeking to impute income bears the onus of showing, on a balance of probabilities and a rational and evidentiary basis, that income should be imputed: *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 at para. 140.
- [50] The principles of imputation of income were canvassed by the Court of Appeal in *Willms v. Willms*, 2020 BCCA 51 at para. 41, in which they quoted extensively from the decision in *Marquez* at paras. 36-38:
- [41] [ ]
- [36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.
- [37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46.
- [38] Although the legal foundation for awarding spousal support is different from that of child support (see *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269 at para. 208), the test for imputing income for the purpose of fixing the quantum of support is similar. Again, the test

is one of reasonableness, having regard to the same factors to be considered in imputing income for child support. However, the concept of "needs" for non-compensatory support also includes a consideration of the marital standard of living: *Myers v. Myers* (1995), 65 B.C.A.C. 226, 17 R.F.L. (4th) 298 at para. 10, *Moge v. Moge*, [1992] 3 S.C.R. 813 at 870, *Bracklow* [Bracklow, [1999] 1 S.C.R. 420] at para. 36. "Means" has been interpreted to include all capital and other sources of income (*Leskun v. Leskun*, 2006 SCC 25, [2006] 1 S.C.R. 920 at para. 29).

## Analysis

- [51] I am persuaded that there is an evidentiary foundation to impute income to the respondent. The respondent has raised the issue that he has injuries that rendered him unable to work in framing on a long-term basis. If the respondent has a medical disability that renders him unable to work at his previous occupation he needs to provide medical evidence in support of this. He has not done so.
- [52] The respondent admits that he earns \$50/hour and has the skills and experience to earn that amount of money. If he was working full-time he could earn \$104,000 a year. However, there is no evidence before me that supports that he could find a full-time job earning that amount of money. I think it is reasonable that the respondent can find work earning that sum of money for 30 hours a month. This allows him some time to work on his house flipping business and to accommodate some time off when he is looking for other jobs. This equates to \$78,000. I find that the respondent's Guidelines income is imputed at \$70,000, a further reduction of \$8,000 to accommodate any delays in finding work.

Issue 2: What income should be imputed to the claimant for the purposes of support?

### Relevant Facts

- [53] The claimant is a red seal carpenter.
- [54] The claimant sets out in her financial statement that her anticipated income is \$48,000 based on \$4,000 gross per month.
- [55] The claimant's tax returns show the following income:
- 2021 - \$94,720.71 (\$6,600 net rental income, \$8,064.31 capital gains, \$80,056.40 net employment income)
  - 2022 - \$63,793.14 (\$18,441.11 net rental income, \$45,352.03 self-employment income)
  - 2023 - \$111,145.27 (\$18,886.77 net rental income, \$92,258.50 self-employment income)

## Parties' Positions

- [56] The respondent says that the claimant's true income is \$79,200 at a minimum. He submits that she has received all of the rental income from the two properties. He suggests that the earning potential from Robinhood Contracting is in the range of \$4,000/month.
- [57] The claimant says she only earned \$21,419 in 2024. She claims that her income should be imputed at that amount and not at the \$48,000 set out in her financial statement. In addition, she has an autoimmune disease that impacts on her ability to do hard labour and is terrified of heights so she cannot work in roofing. I note that the respondent has admitted that the claimant suffers from spondylitis.
- [58] The claimant says that some of the self-employment income reported on her tax returns should be imputed to the respondent. It was employment income that he actually made and thus should be attributed to him.

## Analysis

- [59] I am not persuaded that the claimant's income should be set at \$21,419. When the claimant was working for Azzano she was earning approximately \$25 per hour. That would be equivalent to \$52,000 a year if working full time.
- [60] Although she indicated in her sworn financial statement that she could make \$48,000 a year, I accept with her limitations on working on roofs and her health conditions a realistic Guidelines income to impute to her is \$40,000.
- [61] I note that she is receiving rental income but that all of that income is used to pay the expenses relating to the properties.

### Issue 3: What child support should be paid?

- [62] Using the Guidelines and imputed income for the respondent of \$70,000 and imputed income for the claimant of \$40,000, the child support owed by the respondent to the claimant is \$451, which I will order at \$450 a month. The child support shall commence on May 1, 2025 and shall continue until further order of the Court or the agreement of the parties.

### Issue 4: Is the claimant entitled to interim spousal support, and if so, in what amount?

- [63] Under the Guidelines with the imputed incomes for the parties, I have ordered the range for spousal support as a low of 0, a mid of 0, and a high of \$134 a month. In the circumstances, I do not see that an interim spousal support order should be made. The issue of spousal support will be left for the trial.

### Issue 5: Should the claimant have exclusive occupancy of the Family Residence?

## Relevant Facts

- [64] The respondent moved out of the Family Residence in October 2023 and the claimant and the Children have continued to reside there. The respondent is currently living with his girlfriend.
- [65] In October 2024, the claimant alleges that the respondent entered into the Family Residence when the claimant was not home.

## Parties' Positions

- [66] The claimant seeks exclusive occupancy as she is living there with the Children and the respondent entered without her permission. In his application response the respondent's position was that there remain possessions in the Family Residence that are still his and he is entitled to them as no division of property has been settled. In his affidavit he indicated that he was "perfectly okay" with the claimant having exclusive occupancy of the Family Residence so long as she supported its sale, paid all expenses, and that the personal property contained therein be sorted out. At the Hearing he advised that he did not have a problem with the order for exclusive possession being sought as he no longer has any possessions in the Family Residence.

## Legal Principles

- [67] Section 90 of the FLA authorizes the court to grant a spouse, for a specified period of time, the exclusive occupancy of a family residence. On an application for exclusive possession, the applicant has the burden of establishing that "shared use of the home is a practical impossibility". If that test is met, then the applicant must show that they should be the preferred occupant on the balance of convenience: *Main v. Smith*, 2021 BCSC 845 at para. 23.

## Analysis

- [68] I am persuaded on the evidentiary record before me that these parties cannot share the occupancy of the Family Residence. The evidence demonstrates that the parties struggle to maintain civil communications even when apart. I find that shared occupancy would exacerbate the existing tensions and risk escalation in their conflicts.
- [69] The respondent has not lived in the Family Residence since he left in October 2023. He is currently renting accommodation with his new girlfriend. The claimant and the Children have been living there and it makes sense that they should continue to do so.

[70] I see no basis for the respondent to enter the Family Residence. Although he asserts there are "zero safety concerns with my ability to access the property" I note that in some of his communications with the claimant he has used inappropriate language such as "you do not plan to be a bitch", swearing at her, and other disrespectful language. Hopefully, he will not use such language in the future and that all future communications will use respectful language.

[71] I see no reason why the respondent has to have access to the Family Residence and I order that the claimant have exclusive occupancy.

Issue 6: Who should collect the rent on the Family Residence and Delray Road Property, and what use should be made of the rental income collected?

### Relevant Facts

[72] There is a self-contained suite in the Family Residence that is being rented for \$1,850 a month. The claimant has the following costs associated with the Family Residence:

- a. The first mortgage on the Family Residence of \$2,453.13 per month;
- b. The second mortgage on the Family Residence of \$1,656 per month;
- c. The insurance of \$286 per month, which increased to \$327.17 per month as of December 2024;
- d. Water/sewer/garbage of \$200 per month; and
- e. One half of the line of credit secured against the Family Residence being about \$400 a month.

[73] The Delray Road Property is rented out to tenants and earns \$3,500 per month in rent.

[74] The following costs are associated with the Delray Road Property:

- a. The mortgage on the Delray Road Property of \$2,024.93 per month; and
- b. Water/sewer/garbage of \$150 per month.

[75] The claimant alleges that there is a shortfall of \$1,820 per month after applying the rental amounts.

### Parties' Positions

[76] The claimant submits that she should receive the rental payments from both properties so she can make sure that the various debts are paid on a timely basis. She is concerned that if the respondent collects a share of the rental income he will not apply it to the various mortgages and place the properties at risk of foreclosure.

- [77] The respondent's position is that he is entitled to half of the rent from both properties and is entitled to use the rental income to help pay his own living expenses. He submits that if he receives half of the rental amounts from both properties then the expenses should be shared on a 50/50 basis.

## Analysis

- [78] It is clear that the mortgages registered against the two properties need to be paid on a timely basis. I accept that the claimant has been doing so. The rental income should be used to pay the mortgages on the Family Residence and the mortgage and utilities on the Delray Road Property. In order to ensure this happens I will order that the rental amounts be paid to the claimant and she is required to use the rental amounts to make those payments. In addition, she will maintain an accounting of the rent received and the payments she has made. The respondent is entitled to receive a copy of the accounting. A final accounting can be done at trial.
- [79] The respondent has been collecting one-half of the rent from the Delray Road Property since December 2024. There is some evidence that he has paid for half of the Delray Road Property mortgage although it is not clear whether he has done so each month since December 2024. I will order that the respondent pay the rent he has received from the Delray Road Property, less any amount used to pay the mortgage on the Delray Road Property, since December 2024 to the claimant.

Issue 7: Who should be responsible for the annual property taxes and home insurance on the Family Residence and Delray Road Property?

- [80] It makes sense to me that both parties be responsible for the property taxes on the two properties. They will be equally shared by the claimant and respondent.
- [81] The insurance on the Family Residence, where the claimant is residing, shall be paid by her. This is in light of the fact that the respondent has his own insurance for the rental he is residing in. The insurance on the Delray Road Property should be shared equally.

Issue 8: Should the respondent be required to produce documents relating to the purchase of a mobile home at 202-1966 Ross Road, Kelowna?

- [82] The claimant seeks the information on the purchase of the mobile home by the respondent to determine how or when the respondent came to own this mobile home and what funds were used to purchase the same.
- [83] The respondent consented in his application response to the order for the production of documents relating to the mobile home, and indicated he subsequently provided the information. However, my understanding is that the respondent has provided a statement of adjustment for the purchase of the mobile home but has not provided documents relating to the source of income used to purchase the mobile home. In his affidavit he states that the mobile home was purchased at the end of August 2024, with funds from a private investor.

He claims that no marital funds were accessed or used.

- [84] The claimant relies on s. 212(1) of the FLA in support of the application for production. If the respondent used family money to purchase the mobile home this is information that should be disclosed in the family law proceeding. Since the respondent claims he did not, then he should have no difficulty in providing documents supporting that the funds came from an investor and no marital funds were used. As such, I will order the production of the documents requested.

Issue 9: Should the respondent be ordered to pay the claimant \$1,048.45 as required by the JCC Order?

- [85] The JCC Order required the respondent to pay the October and November interest on the line of credit and one half of the Children's dental costs.
- [86] The respondent's position is that he is not delinquent on any payments. His position is that he was entitled to offset what he says he was owed on rental amounts to cover the receipts.
- [87] The respondent is not entitled to unilaterally decide not to pay the amounts ordered in the JCC Order but instead attempt to offset the amounts against the rents he says he should have received.
- [88] The claimant has provided proof that the respondent has failed to pay the interest on the line of credit and a half of the dental bill of \$646.90 that was provided to him.
- [89] I note that the orders made at the JCC were done by consent and with the respondent being represented by counsel. The respondent must comply with the JCC Order and he shall forthwith pay to the claimant the \$1,048.45.

Issue 10: Should the respondent pay a fine of \$5,000 pursuant to s. 228 of the FLA?

### Parties' Positions

- [90] The claimant submits that the respondent should pay a fine of \$5,000 for his breach of the JCC Order in failing to pay the interest on the line of credit, his half of the dental expenses, and for continuing to speak to the claimant in an extremely rude way contrary to term 5(c) of the JCC Order.
- [91] The respondent believed that he was owed 50 percent of the rent from the two properties and that since the claimant was keeping all of the rent, it was appropriate for him to tell her to offset these payments from his share of the rent. He further agreed that his conduct has not been perfect but, in his view, it does not warrant a fine. He accepted that his behaviour needs to change.

### Legal Principles

- [92] Section 228 of the FLA provides:

## Enforcing orders respecting conduct

228 (1) If a party fails to comply with an order made under this Division, the court may do one or more of the following:

- (a) make a further order under this Division;
  - (b) draw an inference that is adverse to the party, and make an order based on the inference;
  - (c) make an order requiring the party to pay
    - (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the non-compliance, including fees and expenses related to family dispute resolution,
    - (ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the non-compliance, or
    - (iii) a fine not exceeding \$5 000
  - (d) make any other order the court considers necessary to secure compliance.
- (2) If a party fails to comply with an order made under section 225 [orders restricting communications], the court must consider whether it would be appropriate to make an order under Part 9 [Protection from Family Violence].

[93] The court, in considering an application to impose a fine, should first determine if the alleged breach occurred on an objective basis, and then the respondent's subjective motives in breaching the order, along with the surrounding circumstances: *A.E.P. v. M.K.*, 2020 BCSC 1742 at para. 28.

[94] The factors to consider in applying this provision were considered in *A.J.F. v. N.L.S.*, 2020 BCSC 26, where Justice Skolrood, as he then was, stated:

[75] there can be no debate about the importance of complying with court orders. Compliance is not a matter of discretion or choice on the part of litigants. Rather, compliance is fundamental to the proper administration of justice and maintenance of the rule of law: *Grewal v. Nijjer*, 2011 BCSC 332 at para. 20, *aff'd* 2011 BCCA 505; *R.A. v. W.A.*, 2018 BCSC 1910 at para. 131; *Larkin v. Glase*, 2009 BCCA 321 at para. 7; *The Law Society of British Columbia v. Goodwin*, 2015 BCSC 2472 at para. 15.

[83] As noted by Master Bouck in *C.A.L. v. D.E.L.*, 2018 BCSC 772 at para. 43, s. 228 has been considered a limited number of times, but shares much of the same language as s. 213, which was discussed in *J.D.G. v. J.J.V.*, 2013 BCSC 1274. Relying on *J.D.G.*, Master Bouck said, "a robust application of the FLA's enforcement provisions is necessary so that the parties can focus on resolving the true merits of their dispute and not be bogged down in repetitive and costly pre-trial applications." Like s. 213, s. 228 should be applied creatively in a manner sensitive to the particular issues before the court. The court should focus on what measure will be most effective in the circumstances: *J.D.G.* at para. 25.

- [84] In addressing s. 228, a court must also be mindful of the purposes of conduct orders as stated in s. 222 of the FLA: C.A.L. at para. 43. Section 230 is linked to s. 228 in this case because its application is only triggered if no other provision of the FLA applies: s. 230(1); I.J.G.P.G. v. K.M., 2018 BCSC 2468 at para. 20; Partridge v. Partridge, 2018 BCSC 1687 at para. 79.
- [85] The measures set out in ss. 228 and 230 should be resorted to when, and only to the extent, necessary and appropriate to enforce and secure compliance with orders made under the FLA: Kanta v. Kanta, 2017 BCSC 2321 at para. 19; Kanta v. Kanta, 2017 BCSC 1428 at para. 72. Orders under ss. 228 and 230 may be necessary to impart on one or both parties that they are bound by the FLA and must comply with court orders: B.G.M.S. v. J.E.B., 2018 BCSC 1628 at para. 177.
- [86] Although compliance with the FLA and related court orders is critical, the FLA mandates a more holistic approach to resolving family disputes that minimizes delay, formality and conflict between the parties: s. 199(1). The remedies available under ss. 228 and 230 empower the court to provide progressively more serious responses as a particular case may dictate. More importantly, a court's objective should be to fashion a remedy that ensures compliance while addressing the specific situation before the court: J.R.B. v. J.H.F., 2015 BCPC 70 at para. 26.

## Analysis

- [95] The respondent has provided an explanation on why he did not pay his share of the line of credit interest and dental bills. I accept that from his perspective he felt that the claimant was keeping his share of the rents and that he could ask her to offset the payments he owed her from those rents. As noted, he was wrong in this approach but I accept his approach was not entirely unreasonable when considering his perspective.
- [96] In respect to his rude and unacceptable language in the text messages, he has recognized that they were inappropriate and that his behaviour needs to change. I accept that he has recognized that he should not speak in the manner he did and that in the future he will use only respectful language when communicating with the claimant.
- [97] I do not find that the respondent's action in this case warrants the imposition of a fine. However, he has now been duly warned that any future transgressions of items 5 and 6 of the JCC Order may well result in a fine against him.

Issue 11: Upon the sale of the Family Residence, what should happen to the net sale proceeds?

- [98] The respondent's position is that he needs access to some of the net proceeds so that he can use it to earn money in his house flipping business. He suggests that \$100,000 be left in trust which should be sufficient to handle any offsets.

[99] The claimant's position is that there are too many "unknowns" to release any of the net sale proceeds and this should be a matter for trial.

[100] I understand the respondent's frustration with the money being tied up and his inability to use his share of the net proceeds to invest in his house flipping business. Once the Family Residence is sold, the respondent is granted leave to seek an order to have a portion of it paid out. At that time, the "unknowns" that the claimant is concerned about may well be addressed and at least some of the net proceeds can be distributed to the parties.

Issue 12: Should an order to mediate be made?

[101] The respondent advised that he has sought to mediate a number of times and has been met with silence. During the Hearing, I directed the respondent to the provisions of the Notice to Mediate (Family) Regulation, B.C. Reg. 227/2023 (the "Regulation") and pointed out he could issue a notice to mediate under the Regulation. The respondent was not aware of this option. I see no basis for the Court to order a mediation when the process under the Regulation has not been pursued. If for some reason the claimant does not attend a mediation when proper notice in compliance with the Regulation has been given, then the respondent has liberty to reapply for an order to mediate.

[102] The respondent sought an order that not only the parties attend a mediation, but they must make a settlement agreement. At a mediation, with the assistance of a mediator, the parties will try and reach an agreement on the resolution of the outstanding issues. There is no mechanism for the mediator to order that a party enter into a specific agreement.

Issue 13: Should an order striking from the claimant's financial statement for a property exclusion of \$198,000 for the Sandstone Property be made?

[103] As I explained to the respondent at the Hearing, the Court would need to hear evidence on this issue. This is the type of matter that should be reserved for the trial if it cannot otherwise be resolved by the parties.

Issue 14: Should the Court order that the claimant include on her 2024 tax filings the rental income from the Family Residence and the Delray Road Property?

[104] It is not appropriate for the Court to order how the claimant prepares her 2024 tax filings and what income she should claim on it. That is for the claimant and if she has one, her accountant, to decide what should be included on her tax return.

Issue 15: Should the claimant pay occupational rent of \$1,500 per month for living in the Family Residence?

[105] The respondent submits that the claimant should be paying occupational rent on the basis that she is getting to live in the Family Residence rent-free, whereas he is required to pay rent for his living accommodation.

[106] The claimant submits that after paying for the total monthly costs of both properties she is out of pocket \$1,820 in excess of the rental income.

[107] In my view, the issue of whether the claimant should pay occupational rent is one that should be decided at the trial when the Court has a full evidentiary record.

## Orders

[108] The following orders are made:

1. The claimant is found to be a resident of British Columbia and is found to have a gross annual income of \$40,000.
2. The respondent is found to be a resident of British Columbia and is found to have a gross annual income of \$70,000.
3. The respondent will pay to the claimant the sum of \$450 per month for the interim support of the Children, commencing on May 1, 2025 and continuing on the first day of each and every month until further order of the Court or the agreement of the parties.
4. The claimant's application for interim spousal support is dismissed.
5. The claimant will have exclusive occupancy of the family home located at 2772 Canyon Crest Drive, West Kelowna, BC (the "Family Residence") until the property is sold or further order of the Court.
6. The claimant will collect the rental income from the tenants of the Family Residence and from 2551 Delray Road, West Kelowna, B.C. (the "Delray Road Property") and apply the rental income to the following family debts:
  - a. The first mortgage on the Family Residence of \$2,452.13 per month;
  - b. The mortgage on the Delray Road Property of \$2,024.93 per month;
  - c. The utilities on the Delray Road Property; and
  - d. Any remaining amount towards the second mortgage on the Family Residence.
7. The tenants of the Delray Road Property are directed to make the rental payments exclusively to the claimant and not to the respondent until further court order or the agreement of the parties.
8. The claimant will keep an accounting of all rental income received and payments made and provide a copy of that accounting to the respondent upon his written request for it.
9. The rental income received by the respondent from the tenants of the Delray Road Property since December 2024, less any amount paid to the Delray Road Property mortgage, shall be forthwith returned to the claimant by the respondent.

10. The claimant and the respondent will be equally responsible for the property taxes for the Family Residence and the Delray Road Property, when they become due.
11. The claimant will be solely responsible for the insurance on the Family Residence. The parties will be equally responsible for the insurance on the Delray Road Property.
12. The respondent will produce documentation pertaining to the purchase and sale of the mobile home located at 202-1966 Ross Road, West Kelowna, BC within 14 days of this Order. This production shall include the source of the income used to purchase the mobile home.
13. The respondent shall forthwith pay to the claimant the sum of \$1,048.45 as required by the judicial case conference order of August 16, 2024 ("JCC Order").
14. The claimant's application for a fine of \$5,000 for non-compliance and breaching of the JCC Order is dismissed.
15. Upon the sale of the Family Residence the net sale proceeds are to be held in trust in the trust account of Connect Family Law until further agreement of the parties or court order. The parties have liberty to apply for a payment out from the net sale proceeds.
16. The claimant will produce the T1 General for Robinhood Contracting to the respondent when it has been prepared.
17. The respondent's application for an order to mediate is dismissed, with leave to reapply.
18. The respondent's application to strike the property exclusion claim in the claimant's financial statement is dismissed as this is a matter for trial.
19. The respondent's application to require that the claimant include in her 2024 tax filings all rental income from the Family Residence and the Delray Road Property is dismissed.
20. The respondent's application for the claimant to pay occupational rent is dismissed with liberty to apply at trial.
21. The requirement to obtain the respondent's signature approving the form of the Order is dispensed with.
22. The lawyer for the claimant shall email a copy of the filed Order to the respondent.

Issue 16: What costs order should be made?

[109] In my view, there was divided success on the two applications I heard. In the circumstances, each party will bear their own costs.

"Forth J."

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