

CANADA / JUDGMENT

Hanson v. Hanson

2024 BCSC 1492

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Supreme Court of British Columbia

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2024 BCSC 1492 Hanson v. Hanson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hanson v. Hanson,

2024 BCSC 1492

Date: 20240815

Docket: E64784

Registry: New Westminster

Between:

Lindsey Alyson Hanson

Claimant

And

Joel Robert Hanson

Respondent

Before: The Honourable Justice Bantourakis

Reasons for Judgment

Counsel for the Claimant:

G.A. Laughlin

The Respondent, appearing on his own behalf:

J.R. Hanson

Place and Dates of Trial:

New Westminster, B.C.

June 24-27 and July 10, 2024

Place and Date of Judgment:

New Westminster, B.C.

August 15, 2024

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I. INTRODUCTION

- [1] The claimant and respondent began living together in a marriage-like relationship on January 1, 2011 and were married on August 19, 2017. They have two children. Their son was born in October 2011 and is currently 12 years old. Their daughter was born in May 2018 and is six years old.
- [2] The parties separated on September 15, 2020. They agree there should be an order for divorce and the issues to be determined are:
- a. What orders should be made regarding parenting arrangements?
 - b. What amount of child support should be paid by each party and what are their obligations regarding s. 7 expenses, both prospectively and retroactively?
 - c. How should family property and debt be divided and, relatedly, should the claimant succeed in her equitable claim for occupational rent?
 - d. Should spousal support be ordered, prospectively or retroactively?
- [3] The trial took place from June 24 to 27, 2024. The parties were then asked to provide additional submissions on the factors that apply in assessing claims to retroactive support. Those additional submissions were made on July 10, 2024.
- [4] The only two witnesses at trial were the claimant and respondent. Considering they were recounting past events that occurred in the context of a relationship that had significant difficulties, it is unsurprising that their recollections differed at times. I have concluded those differences are largely a function of the passage of time and the difficult course their relationship has taken. That is, to the extent that I have not accepted a party's evidence on a given point, unless I have indicated otherwise it is because I have concluded that their evidence on that point is simply less reliable, because of the passage of time and other factors.
- [5] As is often the case in such matters, the court is confronted with parents who each deeply love their children, but find themselves at an impasse because of their inability to agree on certain points. While the course of their separation has been difficult, it can be hoped that with court orders settling their outstanding disputes, they will be able to move on with their separate lives, keeping their children's best interests at the forefront.

II. BACKGROUND

- [6] The parties became romantically involved in 2009. They began living together in January of 2011, around the time the claimant learned she was pregnant with their first child. At the time, the claimant was 22 years old; the respondent was 23. They had very little. The claimant worked as a server in a restaurant in Langley. The respondent was a longshoreman, earning more than she did. They lived in a succession of rental suites over the years.
- [7] When the parties' son was born in October of 2011, the claimant stopped working as a restaurant server. She returned to school and obtained a diploma in Early Childhood Education. However, before she could start working in that field she was given the opportunity to get into longshoring through the respondent's father who was a longshoreman and a member of the union. She decided to pursue that career route instead. After some initial training, she began working as a casual longshoreman in October of 2012. Throughout this time, the respondent continued working as a longshoreman as he had since he was a teenager.
- [8] The term "casual longshoreman" denotes a person who works as a longshoreman but has yet to obtain full membership in the union. In order to qualify for that membership, a casual longshoreman must build up seniority over time by working a sufficient number of shifts and rising through the ranks of various "job boards".
- [9] In September of 2016, the parties bought a home together, located on Swan Avenue in Mission, British Columbia. Most of the purchase price was financed through a mortgage. Title to the home is in the respondent's name only, but there is no dispute that it is family property subject to division under the Family Law Act, S.B.C. 2011, c. 25. This is, by far, their most substantial asset.
- [10] On August 19, 2017, the parties married and then in May of 2018 their daughter was born. Also in May of 2018, the respondent became a foreman within the longshoring industry, which increased his earnings. The claimant took maternity leave, while the respondent worked. During this period, the claimant was primarily responsible for the household and children, though the respondent helped with nighttime care for the baby for a time. The claimant returned to work as a casual longshoreman after 18 months.
- [11] The claimant has worked her way up the ranks of seniority as a casual longshoreman and is now eligible for full union membership once a spot is offered to her.
- [12] By mid-September of 2020, the claimant had decided she no longer wanted to continue the spousal relationship. On September 15, 2020, she moved out of the family home with the children, renting a basement suite nearby. She was not able to afford to rent a detached home equivalent to the one on Swan Avenue. The basement suite she rented was in a newer home and had an above-ground pool the children were able to use and enjoyed very much. The respondent remained in the family home and is still there today.

- [13] The parties' split was acrimonious. Among other things, they disagree about what the parenting arrangements were at various times in the years that followed and why, a point that I address below.
- [14] In April of 2022, the respondent went on leave from work due to workplace harassment resulting in post-traumatic stress disorder. He is currently in receipt of Workers' Compensation benefits. His income has gone down significantly as a consequence. He is engaged with counselling and other therapies made available to him through the workers' compensation process. The evidence at trial was that his condition has improved somewhat and the prospects for his return to work seem fair. However, the timeline for his return to work remains unclear. If he is unable to return to longshoring, he will have to retrain in a different area.
- [15] By August 1, 2023, the claimant had left her basement suite in Mission and moved to Surrey where she lives with her parents. Initially, both children moved with her. However, about two months after the move, starting in October of 2023, the son began living with the respondent in Mission, while the daughter remained with the claimant in Surrey.
- [16] The respondent made some payments to the claimant by way of child support or for specific expenses for the children. Those payments began in November of 2020 and the vast majority were made in 2021. The respondent says that he has made a total of \$24,253 in lump sum payments to date. This number reflects the total he submitted in a document entitled "Statement of Payments" that was tendered at trial, minus three thousand dollars the claimant returned to him.
- [17] The claimant confirms she received all but \$1,500 of that amount. Specifically, there is one \$900 payment, and one \$600 payment she says she has been unable to locate a record of. She was not able to say conclusively she had not received those amounts, only that she was unable to locate them in her banking records. I find it is more likely than not that those payments were made and received. I accept the respondent's testimony in that regard because he provided banking documents confirming the amounts sent on the relevant dates with reference to e-transfer confirmation numbers.
- [18] It is uncontroversial that the payments the respondent made for 2020 to 2023 fell well below the amounts provided in the Federal Child Support Table considering his guideline income and the parenting arrangements then in place. It is also agreed that for 2024 the claimant is the child support payor.

III. ANALYSIS

[19] The parties were able to agree on a fair amount at trial. For example, there is much agreement on parenting arrangements and little in dispute when it comes to division of family property. Unfortunately, the bad feeling that persists between them appears to have made reaching that point difficult and, despite some notable points of agreement, they pushed forward with a trial on all issues.

A. PARENTING ARRANGEMENTS

[20] To the parties' credit, with the benefit of a s. 211 report, they have been able to substantially agree on parenting arrangements. I have considered that report, the parties' views and the totality of the evidence in assessing what parenting orders will be in the children's best interests, considering all their needs and circumstances. In so doing, I have considered each of the factors set out in s. 16(3) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and s. 37(2) of the Family Law Act. I have assessed the children's best interests from their point of view and not the perspective of either parent: see e.g., *C.M. v. N.L.*, 2020 BCSC 3, at para. 95.

1. Parenting Arrangements Since Separation

[21] After the claimant moved out of the family home on September 15, 2020, the children lived with her and there was a period of approximately six months during which they saw little of their father. The parties disagree on why that is, but little turns on it now. At that point, the son was nine years old, and the daughter was about two and half. The mother opted to remain in Mission so that the son would not have to change schools or leave his friends.

[22] Starting around April of 2021, after the family's nanny resigned, and until April of 2022, the respondent says there was essentially an informal shared parenting arrangement whereby the children would stay with him for a few nights a week - often from Sunday and into the beginning of the week, so that the claimant could put herself forward for more desirable shifts at work. The claimant disagrees. She says that the respondent was working long hours during this time and saw the children for two to three days at a time when his work schedule allowed but that this never approached a shared parenting arrangement. There was at least one time he was away for a full month because he was working on a salvage operation out of town.

[23] I find that the children continued residing primarily with the claimant from April 2021 to April 2022, though the respondent did have parenting time as and when his work schedule allowed. I prefer the claimant's evidence on this point because it is consistent with the broader body of evidence regarding the respondent's work commitments that year, including that he was working on a significant project in the latter portion of 2021 (the salvage operation) which yielded substantially higher earnings for him than he had previously had. It is also consistent with an earlier affidavit from the respondent in these proceedings, in which he indicated that the children resided primarily with the claimant from September 2020 until April 2022.

- [24] As mentioned above, the respondent stopped working in April 2022 due to a workplace issue. Thereafter, the parties entered into a shared week-on/week-off parenting arrangement in which the children resided with each parent equally. That arrangement was formalized a year later in an interim consent order made at an April 2023 Judicial Case Conference.
- [25] However, shared parenting was interrupted in mid-June 2023 when the Ministry of Children and Family Development ("MCFD") became involved due to reports, among other things, of marijuana in the respondent's home. On June 14, 2023, the respondent agreed to a safety plan under which he did not see the children for a period of time.
- [26] That safety plan was short-lived and by early July the MCFD did not object to the respondent resuming parenting in accordance with the consent order. He initially did that, but the claimant remained concerned and did not abide by the consent order. The children saw their father infrequently from July to mid-October of 2023. This was particularly so for the daughter, whom he saw only very rarely. However, even with the son, parenting time was limited and sporadic during this period and does not appear to have included overnights for the most part.
- [27] Also, by August of 2023, the claimant had moved to Surrey with the children to live with her parents. This compounded matters, as it effectively made the consent order's week-on/week-off schedule completely unworkable.
- [28] Then, in mid-October 2023, the respondent took their son on a hunting trip. At some point, the child indicated he wanted to reside with his father in Mission, and not with his mother in Surrey. From mid-October 2023, therefore, the son has lived with the respondent, while the daughter has lived with the claimant. While the children have had some parenting time with the parent they do not live with in the interim, it has been limited.

2. The s. 211 Report

- [29] A s. 211 report was tendered at trial and, for the most part, neither party takes issue with its recommendations. The report author recommends that the son continue residing primarily with the father and the daughter reside primarily with the mother. The report also proposes a 4-week parenting time schedule in which both children would spend one weekend with one parent and then the other on odd weeks, and a portion of the weekend with the parent they do not reside with on even weeks. On the schedule the report author recommends, the parents would each have a full weekend with both children every four weeks, and two half-weekends with both children in that same period. The children would see each other every weekend and the parents would see both children on 3 out of every 4 weekends.
- [30] The parties indicated they were amenable to this proposal, though they each suggested some adjustments. For example, the mother said that simply alternating weekends with both children might be simpler and the father said that allowing the parents time alone with the child who does not reside with them could be important.

[31] As for summers, the report recommends maintaining the above schedule except that the children could spend 7 days in July and 7 days in August with each parent to allow for vacations. The report does not make specific recommendations regarding Christmas. For Mothers' Day, Father's Day and the children's birthdays, the report suggests that the other parent be allowed parenting time between certain times. Both parties agreed that it would be best for any parenting order to make provision for these times as well, and were generally amenable to parenting time being adjusted in that regard.

3. Parenting Findings

[32] I have considered the s. 211 report's recommendations and the parties' positions on parenting time on the whole of the evidence with a view to the children's best interests.

[33] I agree that the son should remain primarily resident with the respondent. I find that that is currently the son's wish, and it allows him to remain with the friends and community he has known since his very early childhood. At almost 13 years of age, the reality is that he now has and will continue to have significant agency in the matter. I also agree that the daughter should remain primarily resident with the mother given the arrangements as they have been to date, her young age, and the benefits to her of consistency in that regard, among other things.

[34] The concern then is how to ensure that the children are given adequate parenting time with the parent they are not living with, which is critical given the sporadic and limited nature of that parenting time in recent months, which is not in their best interests. The children's relationships with the other parent will need to be nurtured and allowing for regular and consistent parenting time will be critical in that regard.

[35] Equally important, in my view, is that the children be assured time with each other. There is, admittedly, an age gap between these children. But that does not mean the sibling relationship is any less important or meaningful in assessing their best interests. In fact, it is apparent that the children's interests in this regard have not been attended to these past months and the potential impacts on them could be long lasting and negative if the situation continues as it has. The children must have the experience of being parented together and of being a regular part of each others' lives in some way to ensure the relationship between them is not negatively impacted by the parties' conflict.

[36] I have concluded that the four-week parenting time schedule proposed in the s. 211 report best accomplishes the above purposes. That will be my order. As for summer time, each parent can take seven days in July and seven days in August which are non-consecutive to have both children with them provided they are on vacation during that seven-day period.

- [37] The order will allow for the parties to agree to modifications to the parenting schedule if they wish and can both agree. For the present time, however, the schedule I am endorsing ensures the children have the opportunity to rekindle their relationship with each other by seeing each other every weekend, and the opportunity to rekindle their relationships with the parent they do not reside with, by seeing them three out of every four weekends.
- [38] I also order parenting time adjustments for certain special occasions. For Christmas, in even numbered years, the children will spend from noon on December 24 until noon on December 25 with the claimant and from noon on December 25 until noon on December 26 with the respondent, and the reverse in odd numbered years. The children will have parenting time with the claimant from 11:00 a.m. until 5:00 p.m. on Mothers' Day and parenting time with the respondent between those same hours on Fathers' Day. On the children's birthdays, they will have parenting time with the parent with whom they are not residing from 5:30 p.m. until 9:00 p.m. Again, the parties could agree to any modifications they see fit. But if they are unable to agree, the order will provide certainty as to their obligations.

B. CHILD SUPPORT AND SECTION 7 EXPENSES

- [39] Child support orders are child-centered, not parent-centered and require consideration of the children's needs as the priority, including the relative ability of each parent to pay. Such orders reinforce the joint obligations of parents to financially support their children: *Willick v. Willick*, [1994] 3 S.C.R. 670 at 689-690.
- [40] Child support is the right of the child and depends on the income of the payor and not on a discretionary balancing of needs and means: *Kerr v. Baranow*, 2011 SCC 10 at para. 208. Child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together and is not confined to furnishing the necessities of life: *Michel v. Graydon*, 2020 SCC 24 at para. 10.
- [41] The parties agree that their guideline incomes for all post-separation years, net of union dues and grossed up to account for non-taxable income, are as follows:

Year

Claimant

Respondent

2020

\$109,680

\$149,389

2021

\$129,739

\$294,324

2022

\$127,260

\$180,188

2023

\$114,987

\$117,021

2024

\$114,987

\$83,333

[42] Here, the Court is being asked to make both prospective and retroactive child support orders. I will address each in turn, noting that given the claim for divorce, my orders are being made pursuant to the Divorce Act.

1. Prospective Child Support and Section 7 Expenses

[43] The daughter now resides primarily with the claimant, while the son resides primarily with the respondent. Section 8 of the Federal Child Support Guidelines, SOR/97-175 addresses split parenting arrangements, and provides that in such a scenario the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

[44] The claimant acknowledges that based on the parties' current incomes, the differential calculation results in amounts payable by her to the respondent. However, the claimant points out that the respondent's income is expected to exceed hers when he returns to work. Accordingly, she asks this Court to make an order that will allow for annual review and adjustment of support obligations. The respondent has not objected. My order will provide for payment of support by both parties with set off, as well as annual review, to accommodate changes in the parties' income levels and the reality that the respondent may once again become the child support payor.

[45] I find that the claimant is a resident of British Columbia and has a gross annual income of \$114,987. The respondent is found to be a resident of British Columbia and to have a gross annual income of \$88,333.

[46] The respondent will pay the claimant the sum of \$844 per month for the support of the daughter. The claimant will pay the respondent the sum of \$1,072 per month for the support of the son. To satisfy each party's obligations to pay child support, the party who is required

to pay the higher amount will pay to the other party the net difference between the amounts each spouse is required to pay on September 1, 2024 and continuing on the first day of each and every month thereafter. These payments will continue for as long as the children are eligible for support under the Divorce Act or until further agreement of the parties or court order.

- [47] Further, for as long as the children are eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than May 1st each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by Canada Revenue Agency, immediately upon receipt.
- [48] As for s. 7 expenses, the claimant has provided evidence of past qualifying expenses, such as for child care and tutoring, which can be expected to continue. On this basis, I am satisfied that a prospective s. 7 order is warranted.
- [49] The parties will pay their proportional shares for the children's special or extraordinary expenses. The parties' respective proportional shares are the Claimant's 57% and the Respondent's 43%. The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.
- [50] The parties shall conduct a review of child support and the children's special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by June 1 of every year.
2. Retroactive Child Support: Claimant's Application to Amend
- [51] At trial, the claimant sought child support retroactive to the date of separation in 2020. She did so with reference to the child support table amounts for those years, without acknowledging that retroactive awards import additional considerations: *D.B.S. v. S.R.G.*, 2006 SCC 37. Additionally, the Notice of Family Claim filed in April of 2022 advanced a claim for claim for child support from May 1, 2022 onward only.
- [52] The parties were afforded the opportunity to make additional submissions on these issues. At that point, the claimant sought leave to amend her pleadings pursuant to rule 8-1 of the Supreme Court Family Rules, so as to advance a claim for child support retroactive to the date of separation. The self-represented respondent opposed the amendment. Though he did not use this terminology, I understood him to say he would suffer prejudice if the amendment were allowed.
- [53] The considerations governing the amendment of pleadings in these circumstances are well-established. The court will consider (a) whether the amendment is inconsistent with the pleadings already filed on behalf of the party seeking the amendment; (b) whether the amendment is inconsistent with evidence already tendered by that party and their witnesses at trial or discovery; (c) whether the amendment would have changed the whole course of trial if it had been asked for at the outset of trial; (d) whether it would be unfair to the opposing party; and (e) whether the amendment is necessary for the purpose of

determining the real issues raised or depending on the pleadings: B.L.S. v D.J.S., 2019 BCSC 846, at para. 315.

- [54] On the application of these factors and in the exercise of my discretion, I find that the claimant's application to amend should be allowed. The amendment is consistent with the pleadings filed in that child support has always been in issue, though the amendment now posits an earlier commencement date. The amendment is not inconsistent with the evidence at trial and would not have changed the whole course of trial. Counsel for the claimant emphasizes that the trial proceeded as though retroactive support to September 2020 was in issue, as he was alerted to the deficiency in the pleadings only upon the Court's inquiry. The amendment does raise notice issues vis-à-vis the respondent, but as I will explain below, that can fairly be taken into account in conducting the substantive analysis of whether a retroactive award should be made. Finally, allowing the amendment ensures a full consideration of child support issues from the date of separation onward.

3. Retroactive Child Support Findings

- [55] The claimant seeks \$75,757 in retroactive child support for 2020 through 2023. The major part of that amount (\$46,344) is attributable to child support for 2021. The claimant agrees that the lump sum payments she received from the respondent should be deducted from that amount.
- [56] Retroactive child support orders, which effectively require a payor parent to pay what, in hindsight, should have been paid before, implicate different considerations than prospective support orders: D.B.S., at paras. 2, 131-135. The assessment is based on an analysis of four factors: (1) the circumstances surrounding the delay in applying; (2) the payor parent's conduct; (3) the child's circumstances; and (4) any hardship a retroactive award may cause: D.B.S., at paras. 95, 100-116, 133; Michel, at para. 29.
- [57] Retroactive child support orders should not be viewed as exceptional. They hold payors to the legal obligation they always had to pay support commensurate with their income: D.B.S., at paras. 2, 5. All relevant factors are considered to determine whether a retroactive award is appropriate: D.B.S., at paras. 5, 97 - 98. Trial judges should adopt a broad and holistic approach in the application of these factors, none of which is determinative on its own and the court maintains significant discretion in determining retroactive child support: D.B.S. at para. 99.

Circumstances Surrounding Delay in Applying

- [58] On the first factor, though these proceedings were not commenced until 2022, I accept that the claimant requested that the respondent pay child support from very shortly after separation in 2020. As a consequence, the respondent made a series of payments beginning in November of 2020 and throughout 2021. The respondent acknowledges the claimant requested child support early on and says that he thought at the time he owed \$1,000 a month factoring in both of the parties' incomes but that the claimant told him this was not

enough, so he paid \$1,500 a month. The claimant did not give evidence in this regard, other than to confirm which amounts she received. The respondent made a \$7,000 lump sum child support payment to claimant in November 2021. However, the claimant then returned \$3,000 of that amount to him, for reasons that were never clearly addressed at trial.

- [59] When the claimant commenced these proceedings on April 14, 2022, she claimed child support for both children commencing on May 1, 2022 only. Though she has now been granted leave to amend that date, she did not seek to do so after the respondent filed a financial statement in October of 2022 that disclosed and quantified his 2021 income. Her trial brief did not signal any intention in that regard either. She has been represented by counsel throughout.
- [60] On the information available to me, the claim for support retroactive to 2020 was advanced for the first time at trial. That being so, certainty and whether the payor parent may have been invited to feel that their obligations had been met are relevant considerations, albeit the attendant concerns are attenuated in the child support context: D.B.S., at para. 102.

Payor's Conduct

- [61] The second D.B.S. factor is the payor's conduct. As mentioned above, the claimant appears to have requested child support shortly after separation and the evidence I accept is that the respondent began making payments to her in November of 2020.
- [62] However, it is equally clear that the respondent's payments fell short of what he owed under the Guidelines. The respondent says that he looked information up online regarding child support and paid what he understood to be the proper amount. As mentioned above, he said he thought he owed \$1,000 a month factoring in both of the parties' incomes but that the claimant told him this was not enough, so he paid \$1,500 a month. Of course, because the children were primarily resident with the claimant, her income ought not to have factored into the analysis.
- [63] The respondent did make a number of \$1,500 payments to the claimant in 2021, and the total of all the payments he made that year slightly exceeds an average of \$1,500 a month, though several of those payments came in smaller increments and possibly in response to requests for contribution to certain of the children's expenses.
- [64] The claimant and respondent work in the same industry and the claimant's evidence suggested she was aware of his earnings until they separated in the latter half of 2020. She was also aware that he was working long hours on a salvage operation in 2021. I accept the respondent's evidence that he did not know earlier in 2021 that he would be working on a particularly remunerative project (the salvage operation) in the latter portion of that year, which resulted in much higher earnings by the end of the year than he had anticipated. I also accept his evidence that he made a \$7,000 lump sum payment to the claimant in November of 2021 because of those higher earnings.

- [65] The claimant did not give evidence on this particular point other than to say the respondent had "randomly" sent her \$7,000 and that she had returned \$3,000 of that amount to him. The respondent confirmed that the claimant had returned a portion of the \$7,000 to him. As noted above, the reason she returned those funds was never clearly addressed at trial.
- [66] Payments from the respondent to the claimant then effectively petered out in 2022, which is the year the parties began a shared parenting arrangement and the respondent went off work. It is also the year the claimant commenced this family law claim. To the extent that the respondent believed he was meeting his support obligations in the latter part of 2020 and throughout 2021, I find that cannot reasonably have been the case starting in 2022 and through 2023.
- [67] Further, though I have accepted that the respondent did not appreciate, in the first part of 2021, that he would experience a significant increase in earnings in the latter portion of that year, he certainly knew that to be the case by the end of 2021 and knew this meant he should be paying more in the way of support as evidenced by the large lump sum payment he made to the claimant in November 2021. However, he does not appear to have formally disclosed his increase in income until October of 2022 and, even if he did, far from increasing the amount he paid in child support, his payments petered out in 2022 and then effectively ceased.
- [68] The Supreme Court of Canada has confirmed that blameworthy conduct is not limited to "egregious cases of deception or intentional evasion", "but may also extend to cases of mere passivity": *Colucci v. Colucci*, 2021 SCC 24, at para. 41. "[A]nything that privileges the payor parent's own interests over his/her children's right to an appropriate amount of support" constitutes blameworthy conduct for the purposes of this analysis: D.B.S. at para. 106. Failure to disclose an increase in income has repeatedly been held to be blameworthy conduct justifying variation to the date of the change in income; D.B.S. at para. 124; *Colucci* at paras. 40-42; *Michel*, at paras. 34, 36.

Circumstances of the Children

- [69] The next factor to consider in assessing whether a retroactive award should be made is the children's circumstances, both past and present. Here the evidence suggests that the children's standard of living from separation until 2023 was not what it was when their parents were together, because the claimant could not afford to rent a detached home, and so ended up renting a basement suite, albeit a newer one with access to a pool that the children loved: D.B.S., at para. 111. Maintaining that standard as much as possible is one of the core principles animating child support: D.B.S., at para. 38.
- [70] However, the evidence does not establish other impacts on their standard of living, nor did they experience hardship. While a recipient parent's hardship may weigh in favour of a retroactive child support award (see *Michel* at para. 123) I do not find that it does in this case.

- [71] I would also say here that I do not accept that the claimant was compelled to move back in with her parents due to hardship and an inability to provide any higher standard of living to her children than shared accommodation. Considering the claimant's income and the evidence more broadly, I find the claimant's decision to move in with her parents was likely influenced by a variety of factors.
- [72] In terms of the children's current circumstances, I must consider what benefit the children would receive from a retroactive award: D.B.S., at paras. 110-112. In my view, the question has additional nuance here as there is now a split parenting arrangement and the father is the child support recipient, whereas the most significant portion of the retroactive amount sought relates to a period when both children were primarily resident with the mother and she was the child support recipient. A standard of living commensurate with what the child enjoyed during the marriage cannot be bestowed retroactively: D.B.S., at para. 111.

Hardship

- [73] The final consideration under D.B.S. is hardship. Based on his financial disclosure, the respondent will have to borrow to pay a retroactive child support order. His income now is far lower than it was in 2021 which, as noted, is the year for which the major part of a retroactive award would be owing. He says he does not know how much the bank will be willing to lend him, considering he also wishes to borrow to buy out the claimant's share of the family home.
- [74] D.B.S. does not require that there be no hardship, particularly where there has been blameworthy conduct: D.B.S., at paras. 114 - 116. However, the son now resides with the father, and any impacts on him should be considered as well.

Date of Retroactivity

- [75] Where an order for retroactive child support is justified, it will generally be payable from the date of effective notice: Colucci, at para. 39. However, where there is blameworthy conduct, the date of effective notice is not relevant: Michel, at para. 36. Unless the statutory scheme clearly directs otherwise, a court should not order a retroactive award in an amount that it considers unfair, having regard to all the circumstances of the case: D.B.S., at para. 130.
- [76] Considering all of the above circumstances, I find that a retroactive child support order is justified in this case, but that the date of retroactivity should be set to January 1, 2022. This date coincides with the respondent's blameworthy conduct on the findings I have made. It also accommodates the delay and certainty concerns arising from the claimant's pleadings and takes into account the children's circumstances and the benefit they would obtain from enforcing past support obligations considering the current split parenting arrangement.

Retroactive Award

- [77] I have already found that the children were primarily resident with the mother from January to April 2022. From May 2022 to June 2023, the parties agree that the children were with them equally on a shared week-on/week-off schedule and on a split parenting arrangement from October of 2023 until the present. They do not agree on the parenting arrangement from July to September of 2023. I find the children were primarily resident with the mother during this period, as this was the period the father's access was limited following the MCFD's involvement.
- [78] Considering the parties' guideline incomes and the parenting arrangements at the relevant times, including periods of both split and shared parenting in light of ss. 8 and 9 of the Guidelines, the amounts owed by the respondent in retroactive child support are, for 2022, \$15,188 and, for 2023, \$5,613, for a total of \$20,801.
- [79] I note here that the respondent's 2022 income as set out earlier in these reasons includes \$11,869 in indemnity funds he received from Waterfront Employers British Columbia to assist him with loss of wages pending assessment of his workers' compensation claim. This is an interest-free loan with no timeline for repayment. None of this amount has been repaid and I am told the respondent may do so as and when he wishes. I find that the indemnity loan in lieu of wages should be included in the respondent's 2022 income and the retroactive amount I have ordered he pay for 2022 reflects that inclusion. Should the respondent pay this loan back, the parties are to address the matter by adjusting future support payments accordingly: *B.K.W. v S.J.H.*, 2022 BCSC 1445, at para. 36.
- [80] The respondent has also sought child support from the claimant for 2024. The claimant does not dispute that she has been the higher earner in 2024 and that she should pay child support for 2024 including months past. Considering the guideline incomes agreed by the parties, s. 8 of the Guidelines and the federal child support tables, she must pay the respondent \$228 per month in child support this year, for a total of \$1,824 owing to the respondent for January through August 2024.
4. Retroactive Section 7 Expenses
- [81] Claims for retroactive s. 7 expenses are also subject to the considerations set out in *D.B.S.* However, unlike the claim for retroactive child support, the respondent confirmed at trial that he does not take issue with the claimant's entitlement to reimbursement for amounts legitimately expended under this heading. That is, I did not take him to object to a retroactive order s. 7 order.
- [82] That being so, I am satisfied that the respondent should be ordered to pay his proportionate share of the children's past s. 7 expenses. This includes amounts paid for child care incurred as a result of the claimant's employment and tutoring costs which I find were both necessary and reasonably incurred.

[83] However, on the evidence before me, I am not able to conclude that the amounts sought by the plaintiff for the daughter's extracurricular activities such as soccer, gymnastics and swimming lessons are properly classified as s. 7 expenses. As explained in *Sadana v. Sadana*, 2021 BCSC 111 at para. 62, s. 7 of the Guidelines targets the payment of certain expenses over and above the basic amounts designed to cover the ordinary costs of raising a child. To qualify, an expense must be "special" or "extraordinary" in some way. Recreational sports and other similar extracurricular activities do not generally qualify "unless the child has unique skill sets beyond that of the 'average child' which may warrant extra support": *Saldana*, at para. 62. While the claimant tendered receipts confirming that expenses for these extracurricular activities were incurred, her evidence does not allow me to conclude that they meet the above standard.

[84] That being so, the respondent must pay his proportionate share of the claimed expenses relating to child care (payment to the family's nanny post-separation while she was still in their employ and, subsequently, daycare and day camps during school breaks) as well as tutoring, but not those relating to soccer, gymnastics or swimming. Based on the receipts and summary of expenses tendered at trial, with which the respondent took no issue, the total owing by the respondent to the claimant under this heading is \$23,132.52.

5. Respondent's Lump Sum Payments & Conclusion

[85] As noted previously, the respondent made various payments to the claimant, from November 2020 onward, totalling \$24,253. The vast majority of those payments were made in 2020 and 2021. The total amount paid from 2022 onward has been \$3,310. Because the claimant is being required to pay child support retroactive to January 1, 2022 only, he should only be credited for lump sum payments made from that point forward. He should not be credited for lump sum payments in 2020 and 2021 when he is not being ordered to cover the shortfall in his child support payments in those years.

[86] Considering all of the above, the amount the respondent owes the claimant for retroactive child support and s. 7 expenses is:

2022 - 2023 child support owing by the respondent: \$ 20,801

2020 - 2024 s. 7 expenses owing by the respondent: \$ 23,132.52

Credit for lump sum payments made by the respondent: (\$ 3, 310)

Credit for 2024 child support owing by the claimant: (\$ 1,824)

TOTAL: \$ 38,799.52

C. DIVISION OF FAMILY PROPERTY, DEBT AND PENSIONS

[87] Family assets as well as family debts are to be shared equally, unless it would be significantly unfair to do so: FLA, ss. 81, 86, and 95; see also *H.K. v. W.K.*, 2017 BCSC 1817 at para. 221; *Kalmiakov v. Shylova*, 2016 BCSC 2095 at para. 100. There are no excluded property claims here and the parties generally agree that there should be equal division of family property and debt, subject to some minor points of disagreement addressed below.

1. The Family Home

[88] When they separated, the claimant left the family home on Swan Avenue with the children and the respondent remained. He wishes to keep the home and emphasizes that it was and remains the children's home as well, and a source of stability for them. The son now resides primarily with him and it is close to the son's school. He says it is in the children's best interests that the home not be sold.

[89] The claimant takes no issue with the respondent retaining the home, subject to her half-interest in it being bought out at a fair price. There is a mortgage, which at the time of the respondent's most recent financial statement totalled somewhat under half of its most recent appraised value of \$750,000. If that remains its value, an equal division would see the parties left with approximately \$220,000 each. If this occurs by way of a buy out, the respondent would retain approximately that amount in equity, and the claimant would receive an equivalent payout of her interest.

[90] The only point of contention on this front is that the respondent seeks reapportionment on the basis that he covered the costs associated with the family home from the date of separation, including payment of the mortgage, property taxes, and expenses for driveway repair and upkeep of the yard. He says that the claimant should pay half of those amounts out of her share.

[91] The claimant points out that she had to leave the family home in order to separate from the respondent and that she was required to pay rent and other expenses associated with her inability to occupy the family home post-separation. She makes a consequent claim for occupational rent, but only to the extent of offsetting any reapportionment. That is, she does not advance a stand-alone claim to occupation rent: see *McManus v. McManus*, 2019 BCSC 123, at paras. 75 - 76.

[92] In my view, having regard to the circumstances under which the claimant left the home, that the children initially left the home, the support paid (and not paid), and other factors discussed in *McManus* at para. 76, the occupation rent and the mortgage payments and other related expenses essentially balance each other out. Accordingly, no payment should be made to or by either party in relation to Mr. Hanson's contributions to maintaining the property and mortgage in good standing or his occupation of the home: see e.g. *Boucher v. Boucher*, 2008 BCSC 1125, at para. 46.

- [93] The reality in this case is that it was a practical impossibility for the parties to remain together in the family home. Either one or both of them had to leave. Here, it was the claimant who left and while the mortgage payments and related expenses were somewhat higher than what the claimant has paid in rent, the respondent obtained the added benefit of being able to reside in the family home. That benefit is significant in my view.
- [94] That being so, I find that any claim the respondent has to reapportionment based on the relevant expenses he has incurred is offset by the claimant's defensive claim to occupational rent and no amount is owing or owed to either party in this regard.
- [95] The respondent shall have an option to purchase the claimant's one-half interest in the home. The value of the home will be determined by obtaining an update to the expert appraisal tendered at trial and the parties will share the cost of obtaining that updated appraisal equally.
- [96] The respondent will have 45 days from the date of the order of this Court to exercise his option to purchase the claimant's one-half interest in the home. In order to exercise the option to purchase, the respondent must pay the "buyout price" to the claimant. The buy-out price will be calculated by fixing the fair market value of the home in accordance with the updated appraisal report and deducting the amounts owing in relation to the home (i.e. the mortgage) to determine net equity in the home to be equally divided between the parties.
- [97] Because title to the home is already in the respondent's name only, it does not appear that there will be any associated conveyancing costs or other usual fees. However, if I am mistaken in that regard, the parties will share those equally. Likewise, because the mortgage is in the respondent's name only, it does not appear that there are any steps required in order to formally release the claimant from obligations in that regard. However, if I am mistaken, those steps should also be taken and the associated costs, if any, shared equally.
- [98] If within 45 days of the date of this order, the respondent has not exercised his option to purchase the respondent's one-half interest in the home at the buyout price, the home shall be listed for sale on the following terms:
- (a) The listing price shall be determined by agreement between the parties. If the parties are unable to agree on a listing price, the listing price shall be the fair market value of the home as determined in the updated appraisal report referred to above;
 - (b) The parties shall have joint conduct of the sale. In the event the parties cannot agree on any matter relating to the sale of the home, either party may seek directions from this Court respecting the conduct of the sale;
 - (c) Upon sale of the home, the following liabilities and expenses shall be paid from the proceeds of sale before any distributions are made to the parties:
 - i. real estate commissions and applicable taxes;

- ii. the usual adjustments between vendor and purchaser;
 - iii. reasonable, agreed-upon legal fees and disbursements relating to the conveyance of the home; and
 - iv. any amounts required to fully pay and discharge the mortgage registered against the home.
- (d) The balance remaining after payment of these liabilities and expenses will be divided equally between the parties.

2. Pensions

[99] The parties agree to the division of their respective pensions in accordance with Part 6 of the Family Law Act. This includes both their credits under the Canada Pension Plan and their employment pensions. There will accordingly be an order for division. The administrative and legal cost of dividing these pensions will be shared equally by the parties.

3. Other Family Property and Family Debt

[100] As regards the remainder of family property and debt, including bank accounts, vehicles, household chattels, lines of credit and other loans, the parties agree to what each one of them should retain, with an equalization payment to account for unequal division. In particular, the respondent confirmed that he does not take issue with the schedule of property and debt the claimant tendered at trial, and the amounts set out therein, subject only to some concern regarding the claimant's valuation of the household contents they agree he should retain.

[101] The claimant described the household contents in her testimony and valued them at \$10,000. I accept that amount as reasonable considering the family home is a three-bedroom home with all the usual contents in terms of furnishings, electronics, appliances and kitchen implements, among other things.

[102] Accordingly, the remainder of family property and debt will be divided as set out in the claimant's schedule of property and debt adduced at trial, with the respondent retaining \$40,676.87 in net assets and the claimant retaining \$37,387.21 in net assets. As a consequence, there will be an equalization payment by the respondent to the claimant of \$3,289.66.

D. SPOUSAL SUPPORT

[103] Spousal support orders may be granted under the Divorce Act or the Family Law Act. Given the claim for a divorce order, s. 15.2 of the Divorce Act provides the appropriate legislative framework: see e.g. *Jordan v. Jordan*, 2022 BCSC 1564, at para. 127.

- [104] When assessing entitlement to spousal support, the objectives that underlie spousal support awards, as enumerated in s. 15.2(6) of the Divorce Act must be considered. A spousal support order should: (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown; (b) 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; (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [105] In making a spousal support order, the court must consider the condition, means, needs and other circumstances of each spouse, including the length of time the spouses cohabited and the functions performed by each spouse during cohabitation: Divorce Act, s. 15(4). In order to make an award of spousal support, whether compensatory or non-compensatory, it is necessary, at a minimum, that the judge determine the incomes of the parties and in some fashion consider their means and needs.
- [106] There are three distinct bases upon which spousal support may be ordered: compensatory, non-compensatory and contractual. The compensatory and non-compensatory bases for a spousal support order were discussed in *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 26-27:
- [26] Compensatory entitlement will arise where, as a result of the parties' roles during the marriage, one spouse has suffered economic disadvantage or has conferred economic advantages on the other. Most often, such entitlement will arise where one spouse has sacrificed career opportunities in order to take on more of the family's household or child-rearing responsibilities. Upon the dissolution of the marriage, the spouse who has given up opportunities may be entitled to spousal support, either to compensate for diminished earning capacity, or to share in the augmented earning capacity of the other spouse. The main goal of compensatory spousal support is to provide for an equitable sharing of the economic consequences of the marriage (see *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813 at 858-66).
- [27] Non-compensatory support entitlement focuses on the needs of the spouses and on their respective means. It is based on the idea that spouses, by virtue of marriage, have some ongoing responsibility to care for one another. The degree to which non-compensatory principles will apply will depend on a close examination of not only the means and needs of the spouses, but also of the nature of the marital relationship and its duration (see *Bracklow v. Bracklow*, 1999 CanLII 715 (SCC), [1999] 1 S.C.R. 420, particularly at para. 53).

- [107] The underlying goals of compensatory and non-compensatory spousal support are the equitable sharing of the economic consequences of a spousal relationship or its breakdown and narrowing the gap between the needs and means of the spouses. The authorities recognize that marriage or a spousal relationship is a joint endeavour and the longer the relationship, the "greater will be the presumptive claim to an equal standard of living on dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813, at para. 84.
- [108] The claimant says she is entitled to spousal support on both compensatory and non-compensatory bases. Although she concedes that no spousal support is currently payable considering the parties' respective incomes, she nevertheless submits that she is entitled to an order for retroactive spousal support and, prospectively, that an order of spousal support in the amount of \$1 should be made with the right to review quantum without showing a material change in circumstances. The premise for this is that the respondent's earnings are expected to increase, possibly substantially, when he returns to work.
- [109] Though the claimant did not ask that any income be imputed to the respondent now, she did suggest that such an application might be forthcoming if the respondent does not return to work soon. Interestingly, both parties' incomes peaked the year after separation, and have decreased each year since.
- [110] The respondent also suggested he might be entitled to spousal support, because he currently earns less than the claimant. I understood him to be saying there might be a non-compensatory basis for entitlement. However, the respondent did not seriously pursue this claim at trial. Among other things, he says that the parties have enjoyed equivalent standards of living following the breakdown of their relationship, and accepts that his income has exceeded the claimant's every year since separation except the current year. A consideration of the parties' means and needs does not disclose spousal support entitlement for the respondent on a non-compensatory basis in any event.
- [111] As is the case with child support, claims for retroactive spousal support engage different considerations than claims for prospective support only: *Kerr*, at paras. 206 - 212. Accordingly, the claimant's entitlement to spousal support must first be determined. Once that entitlement is determined, I will address prospective and retroactive support separately.
1. Entitlement to Spousal Support
- [112] The compensatory basis for spousal support recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success: *Chutter v. Chutter*, 2008 BCCA 507, at para. 50.
- [113] Here, the claimant has meaningful future earning potential and prospects for financial success given her career and earnings to date in longshoring. The claimant was 22 years old when the parties began cohabiting and variously worked in retail as a restaurant hostess or

server. She worked in a restaurant until her first maternity leave. Then she opted for certification in early childhood education. However, during and because of the relationship, she was afforded the opportunity to become a longshoreman and took it. Claimant's counsel took no issue with the proposition that a career in longshoring is far more lucrative than a career in early childhood education. The claimant did not suggest that a similarly or more lucrative career would have been available to her but for opportunities foregone as a result of the joint marital enterprise.

- [114] The claimant's career in longshoring was not impacted by her first maternity leave, as the opportunity to enter into that field only arose after the birth of the parties' first child. The claimant took an 18-month maternity leave from longshoring upon the birth of their second child and assumed primary childcare and household responsibilities during that time.
- [115] The claimant did not testify to any career advances or promotions that were missed or delayed because of the time she was on maternity leave or the role she played in the home more generally (that is, whether during maternity leaves or otherwise). She did say that as a casual longshoreman access to work and eventual full membership in the union is contingent upon accumulating seniority. Seniority is accumulated by working a certain number of shifts.
- [116] There was evidence the parties had a nanny before separation and for a period following that. However, no evidence was given on when they first hired a nanny, why they did so, or any impacts this may have had on the claimant's career involvement or prospects.
- [117] I accept that the respondent progressed into a foreman position, with consequent increase in his earning capacity, around the time the parties' second child was born. I also accept that this required the respondent to work more than he had previously. I am satisfied that he was able to take on the additional work because of the role the claimant assumed in their joint familial endeavour and in particular because of her role in providing childcare and attending to household responsibilities.
- [118] Considering all this, the claimant has established an entitlement to spousal support on a compensatory basis that I would qualify as moderate. The doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse": Moge, at 864.
- [119] As far as non-compensatory entitlement is concerned, the means and needs of the parties are currently similar. The division of property I have ordered will also leave them in very similar situations. I accept that the disparity in the parties' incomes in 2021 left the claimant economically disadvantaged relative to the respondent that year, but that is no longer the case. It is uncertain whether a non-compensatory basis for support may materialize again in future.

2. Prospective Spousal Support

- [120] The Spousal Support Advisory Guidelines ("SSAG") provide guidance in making appropriate spousal support awards. A departure from the SSAG requires an explanation: *Lightle v. Kotar*, 2014 BCCA 69 at para. 63.
- [121] Based on the parties' guideline incomes and child support obligations for 2024, no amount of spousal support is currently payable by the respondent under the SSAG. However, the claimant points out that the respondent's earning potential is high and that his income will increase significantly if he returns to work as a foreman in the longshoring industry. He will not be on workers' compensation benefits indefinitely.
- [122] As the claimant has established a compensatory entitlement to spousal support and the respondent's earnings can be expected to increase, possibly substantially, there will be an order for spousal support payable by the respondent to the claimant in the amount of \$1 per year. Either party may, on or after August 15, 2025, apply for review of the quantum of support.
- [123] In terms of duration, the SSAG provide two possible tests for duration of spousal support: the "length of marriage" test, and the "age of children" test. However, in most circumstances, the courts do not establish a fixed duration of spousal support in an initial order: *J.A.F. v. J.J.F.*, 2019 BCSC 507, at para. 82; *M.B. v. M.L.*, 2024 BCSC 1368, at paras. 271 - 273.
- [124] Considering the daughter's young age and the compensatory nature of the claimant's entitlement, I will not fix an end date for spousal support. However, on or after August 15, 2027, either party may seek review of the duration of support.

3. Retroactive Spousal Support

- [125] Similar considerations apply to a claim for retroactive spousal support as to a claim for retroactive child support: *Kerr*, at para. 207. However, because spousal support involves claims between adults, "concerns about notice, delay and misconduct generally carry more weight in relation to claims for spousal support": *Kerr*, at para. 208. The date of effective notice plays an important role. The failure of the recipient to bring an interim application is not necessarily indicative of delay, provided the recipient commences proceedings promptly after separation and pursues those proceedings to trial with diligence: *Kerr*, at para. 216.
- [126] Here the claimant acknowledges that the SSAG do not yield any amount payable to her at either the low or midrange for any of year except 2021. She is asking that spousal support be awarded retroactively for that year only.

- [127] On the question of notice, formal notice was given when the Notice of Family Claim was filed on April 14, 2022 as it includes a claim for spousal support retroactive to the date of separation. There is dearth of evidence on whether spousal support was broached earlier or, if it was not, why not. In the circumstances, I find that April 14, 2022 is also the date of effective notice.
- [128] Further, I am not prepared to find that the respondent engaged in relevant blameworthy conduct before 2022 and while I accept that the claimant's standard of living was affected in that she resided in a basement suite rather than a detached home after separation, the evidence falls far short of establishing hardship.
- [129] Considering all the relevant factors and taking a holistic view of the matter (Kerr, at para. 212), I find that spousal support is payable from the commencement of proceedings on April 14, 2022. Considering the SSAG yield no amount payable from that point until the present, there are no past amounts owing.

E. DIVORCE

- [130] Both parties consent to the granting of a divorce. I am satisfied that the requirements of the Divorce Act are met including that adequate provision has been made for children of the marriage. Accordingly, I order that subject to s. 12 of the Divorce Act (Canada), the claimant and the respondent, who were married at Langley, British Columbia on August 19, 2017, are divorced from each other. The divorce is to take effect on the 31st day after the date of this order.

IV. COSTS

- [131] The costs of a family law proceeding are governed by Rule 16-1 of the Supreme Court Family Rules. Pursuant to Rule 16-1(7), the costs of a proceeding must be awarded to the successful party "unless the court otherwise orders". The successful party is the party that is substantially successful: *Gold v. Gold*, 1993 CanLII 1248 (B.C.C.A.), at paras. 21-22.
- [132] *Fotheringham v. Fotheringham*, 2001 BCSC 1321 described substantial success as 75% or better. It also set out, at paragraph 46, a four-step inquiry for determining whether one party was substantially successful and if so, whether costs should be awarded:
1. First, by focusing on the "matters in dispute" at trial. These may or may not include "issues" explicitly mentioned in the pleadings.
 2. Second, by assessing the weight or importance of those "matters" to the parties.
 3. Third, by doing a global determination with respect to all the matters in dispute and determining which party "substantially succeeded," overall and therefore won the event.

4. Fourth, where one party "substantially succeeded," a consideration of whether there are reasons to "otherwise order" that the winning party be deprived of his or her costs and each side should then bear their own costs.

[133] There was no successful party on the parenting arrangements as both parties effectively agreed to the s. 211 report's recommendations. This was an important issue and one that created considerable conflict in the post-separation period. The claimant was successful in her claim for retroactive child support though not to the extent sought. The respondent was successful in his claim for child support but that was not opposed. The parties effectively agreed on the division of family property but the claimant was successful in opposing the respondent's attempt to recoup a proportionate share of amounts paid toward the family home post-separation. I consider this to have been a minor issue. Finally, success was divided on spousal support. The claimant was successful in establishing an entitlement to spousal support but unsuccessful in her claim for a retroactive award which was also an issue of importance.

[134] Considering the matter as a whole, I find that the claimant was more successful than the respondent but, in my view, her success does not meet the threshold of 75% or better required for substantial success. Accordingly, each party will bear their own costs.

"Bantourakis J."

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