
CANADA / JUDGMENT

Hart v. Hart

2019 BCSC 885

COURT

Supreme Court of British Columbia

DECIDED

5 June 2019

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2019 BCSC 885 Hart v. Hart

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hart v. Hart,

2019 BCSC 885

Date: 20190605

Docket: E1648444

Registry: Prince George

Between:

Kristin Mae Hart

Claimant

And

Patrick Keith Hart

Respondent

Further Corrected Judgment: The text of the judgment was corrected at paragraph 101 on February 28, 2020.

Corrected Judgment: The text of the judgment was corrected at paragraphs 74, 88, 101 and 103 on June 24, 2019.

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

Counsel for the Claimant:

F. Stevens-Guille

The Respondent, appearing in person:

P.K. Hart

Place and Date of Trial/Hearing:

Prince George, B.C.

February 12-15, 2019

Place and Date of Judgment:

Prince George, B.C.

June 5, 2019

INTRODUCTION

- [1] This trial primarily concerned the division of assets. The parties began dating in high school. They moved in together in October 1996 and were married two years later. They had four children between 1999 and 2006. Their marriage lasted over 18 years, and they separated in April 2015.
- [2] Ms. Hart was primarily responsible for managing the home and raising the four children during the marriage. Mr. Hart worked outside of the home throughout the marriage, though it is not contested that he also helped at home. At the time of separation the children were 9, 11, 14 and 16. They are now 13, 15, 18 and 20. They primarily reside with Ms. Hart and Mr. Hart is agreeable to that arrangement continuing.
- [3] The issues the parties sought to resolve in this trial were:
- a) Divorce;
 - b) Parenting;
 - c) The division of family property;
 - d) Imputation of income for both parties for the purposes of calculating support;
 - e) Retroactive Child Support and special expenses to the date of trial;
 - f) Child support going forward; and
 - g) Spousal support going forward.
- [4] I will deal with each in turn.

DIVORCE

- [5] The parties are both seeking a divorce. I find that the parties have met the requirements under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and are entitled to a divorce, and I give that declaration. There is no issue as to the separation date, and I find that the parties were separated of April 16, 2015.

PARENTING

- [6] The parties are also agreed as to the continuation of the current parenting arrangement whereby the children will continue to reside with Ms. Hart, and Mr. Hart will have parenting time at the children's discretion when they request it. Currently the two youngest spend 1-2 nights a week with their father. Both parents are guardians of the children.

DIVISION OF FAMILY PROPERTY

Family assets and debts

- [7] A great deal of the trial was occupied by the parties seeking to account for various aspects of the family debts and assets, including tax refunds and child tax benefits, vehicles, household furnishings, credit card debt, interest payments on lines of credit on the family home, excluded property claims, and family loans.
- [8] It was agreed that Mr. Hart received substantial tax refunds after separation that were attributable to family income in the years prior to separation. Ms. Hart received child tax benefits. Both parties retained and dealt with vehicles obtained prior to separation, and Ms. Hart kept the household goods and furnishings. After separation, Mr. Hart withdrew the remaining amounts on the parties' two lines of credit, admittedly in part to ensure that Ms. Hart did not access them, and interest accrued on the original amounts owing and on the additional amounts removed.
- [9] Mr. Hart also advanced an excluded property claim for \$15,000 for his original down payment on the family home. He also sought recovery of \$10,000 from the proceeds of the family home to be paid to his father for funds he says were advanced approximately 10 years before separation for roofing the family home and were never repaid. Ms. Hart agrees to the \$15,000 excluded claim on the home, but says that the evidence does not support the existence of a loan from Mr. Hart's father, or that if such a loan was made that it remains due and owing. On the evidence, I find that Mr. Hart has not established this amount as an outstanding family debt at the time of separation.
- [10] The most significant family debt issue was a \$125,000 loan that Mr. Hart made to his then friend and employer, Mr. Hoover, in 2011 during the course of the marriage. That loan was made by taking out and then increasing a line of credit ("LOC") on the family home. It was made at the request of Mr. Hoover for the purchase of investment property and a liquor license without any loan agreement, interest terms, security or compensation. Nor was it a

direct investment in any of the business transactions that it was advanced to support. Mr. Hart's rationale for taking out this LOC on the family home was that Mr. Hoover asked for the funds to help with various business transactions and Mr. Hart trusted Mr. Hoover to repay the amounts. Advancing the funds to Mr. Hoover kept Mr. Hart in Mr. Hoover's good graces, which was understood to reflect positively on Mr. Hart's employment situation and salary. Ms. Hart did not object to this transaction, though she says she was concerned about the lack of interest or repayment schedule.

- [11] It is agreed that Mr. Hoover paid back \$25,000 of this loan during the course of the marriage.
- [12] The remaining \$100,000 continued to be carried as a LOC against the family home with interest payments required of \$450 - \$500 per month. The repayment of this loan, and whose responsibility it was, became an issue in these family proceedings, and ultimately Mr. Hart demanded that his boss repay the principle amount of the loan. By Mr. Hart's account, this demand led to the loss of his job in December 2017 together with the payment of \$100,000 by Mr. Hoover around the same time. The terms of that payment state that it is in settlement of all claims against Mr. Hoover, his partner, and his companies, and covers both the loan and any amounts Mr. Hart may have been owed for wrongful dismissal. Mr. Hart states that the offer was made on a short fuse take it or leave it basis and that he took this offer without consulting Ms. Hart. He only disclosed the receipt of the funds many months later when questioned in examination for discovery as to why he was not pursuing legal action to recover the loan.
- [13] Mr. Hart agrees that these repaid funds are a family asset in the amount of \$90,000. He says the remaining \$10,000 is his pay in lieu of notice and was essentially already recovered by the family as a result of Mr. Hoover temporarily giving him two company cars at values that account for the difference.
- [14] Ms. Hart claims the full \$100,000 paid as a family asset, and says that she is entitled to \$50,000 from the repayment of this loan. She also seeks to attribute the interest on that loan from the date Mr. Hart received the settlement funds in February 2018 to the sale of the home at the end of January 2019.
- [15] The parties each provided spreadsheets and charts of the total amounts they said should be accounted for with respect to all of the above family assets and debts.
- [16] Although not agreeing to all the details, both parties' accounting results in an accounting between them at an amount that rounds to \$51,000 to be paid by Mr. Hart to Ms. Hart. This amount does not include pensions or retirement savings, retroactive child support and special expenses, or the division of the family home.

- [17] Regardless of how each party reached this amount, I am satisfied that \$51,000 represents an appropriate accounting of the amounts owed to Ms. Hart by Mr. Hart for the division of all family assets and debts, including all household items and vehicles, tax returns and investments, interest on the LOC, Mr. Hart's \$15,000 excluded property claim for the family home and the \$100,000 repayment of Mr. Hoover's debt to Mr. Hart.
- [18] This order does not include the division of funds in the parties' non-joint bank accounts opened since separation in their own name which will remain with the named owner of those accounts by agreement.
- [19] It also does not include division of the family home, pension and RRSPs. I will now go on to address those claims.

Family Home

- [20] The family home was sold in early 2019 just before trial. After payment out of the lines of credit and property taxes (which had gone into arrears), the net proceeds currently held in trust were just over \$166,200 at trial.
- [21] Both parties agree that the family visa debt of approximately \$3,200 should be paid from this amount prior to division of the proceeds. Both parties will remain responsible for their personal credit cards.
- [22] Ms. Hart seeks to have the amount remaining in trust after payment of the family visa card split evenly between the parties, subject to any adjustments for division of other assets ordered here, and her claim for retroactive child support.
- [23] Mr. Hart says that the family home increased in value by \$63,000 between separation in April 2015 and its sale in early 2019 and he seeks to have that increase in value allocated solely to him. He says that he is entitled to this amount on account of his having to pay rent in the interim period, and that he remained responsible for and paid for the outstanding and accruing interest on the LOC's against the home. He says this was significantly unfair because Ms. Hart had the benefit of living in the home with the children throughout this time without having to pay rent. He particularly objected to the fact that for a period of about one year Ms. Hart also had a boyfriend living in the home who was not paying rent to her. In addition, Ms. Hart failed to pay the taxes or utilities, and Mr. Hart says she delayed the sale of the home.
- [24] I find that the \$63,000 Mr. Hart seeks to apportion to himself is significantly more than the interest he paid on the LOC or any claim he might have advanced in occupational rent (a claim that was not advanced).

- [25] For most of the separation period, Mr. Hart was living in a company home that was provided by his employer Mr. Hoover. Although it appears he paid significant rent to Mr. Hoover, I find that Mr. Hart's dealings with Mr. Hoover generally do not reflect market costs or requirements and do not provide an objective basis for determining financial costs or entitlements.
- [26] I also consider that Mr. Hart's continued payment of the LOC monthly interest was primarily attributable to the \$125,000 LOC lent to Mr. Hoover, together with Mr. Hart's decision to max out both lines of credit to prevent Ms. Hart from accessing them after separation. While the \$125,000 was a family debt, for which both parties were responsible, its purpose was to assist Mr. Hart in advancing his employment situation. The continuation of this debt after separation was related to Mr. Hart's ongoing employment circumstances whereby it was understood that his income was supplemented to an unspecified extent in exchange for the financial assistance provided through the LOC to Mr. Hoover. I therefore do not find that Mr. Hart's responsibility for paying the interest on the LOC's during the separation and prior to a division of assets to be a significant unfairness to him.
- [27] Ms. Hart says that the increase in value of the home should be shared, there is no reason to reapportion it, and her proceeds from sale should simply be reduced by her portion of the interest on the LOC that Mr. Hart paid.
- [28] Ms. Hart has accounted for her equal portion of the interest on the LOC's in her calculations of the division of the family assets and debts that results in a \$51,000 settlement in her favour. That accounting excludes the interest attributable to the additional debt that Mr. Hart incurred after separation and the interest on the \$100,000 after it was repaid to Mr. Hart in February 2018. I find that Ms. Hart's accounting for the assets and debts to be comprehensive and fair.
- [29] Under s. 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], each spouse is presumptively entitled to a one-half undivided interest in each family asset as a tenant in common upon separation. The opening words of s. 81 make it clear that the presumptive one-half undivided interest under s. 81(b) is "subject to an order that provides otherwise", including an order for reapportionment under s. 95.
- [30] The relevant provisions of the FLA with respect to the issues of reapportionment and compensation are ss. 95, 96 and 97.
- [31] Unlike the regime under the former Family Relations Act, R.S.B.C. 1996, c. 128 that permitted an unequal division of family property if an equal division would result in unfairness, the FLA raises that bar. Under the FLA, the court is only to reapportion family property if an equal division would be "significantly unfair".

- [32] This distinction was also discussed in *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44, where Justice Butler explained that under the current legislation, "[i]t is necessary to find that the unfairness is compelling or meaningful having regard to the factors set out in s. 95(2)." In *Jaszczewska v. Kostanski*, 2016 BCCA 286, the Court of Appeal stated at para. 42 that reapportionment requires "something objectively unjust, unreasonable or unfair in some important or substantial sense."
- [33] Pursuant to s. 87 of the FLA, all family property and family debt is to be valued according to its fair market value at the date of the hearing respecting division of family property and debt. Setting the valuation date at another date is essentially a form of reapportionment and requires a finding of significant unfairness: *Kumagai v. Campbell Estate*, 2018 BCCA 24 at paras. 74-76.
- [34] I find that there is no reason to depart from the ordinary rule that the value of the family home as realized by its sale shortly before trial plus any interest accrued should be divided equally between the parties. Mr. Hart's position that only the value of the family home at the time of separation should be divided, and he should have the sole benefit of the increase in value since separation requires him to establish significant unfairness to him justifying this reapportionment. For the reasons above, I find no significant unfairness to Mr. Hart in this case that would warrant an unequal division through a change in the date of the valuation of the home.
- [35] The circumstances in this case are substantially different from those in *Ernst v. Carmichael*, 2019 BCSC 68 relied upon by Mr. Hart. In that case, Justice Riley reviewed the case law (including some of the cases referenced above) and recognized that under the FLA unequal division will only be ordered where there is "weighty, meaningful and compelling" unfairness. However, he found that it would be significantly unfair in that case to equally divide the value of the family home at the time of trial on the basis of three factors: (i) the short duration of the marriage (3.5 years); a significant passage of time between separation and trial (5 years); and that the relationship began and ended prior to the FLA coming in to force with its presumptive equal division of property for common law relationships. None of these factors are applicable to this case.
- [36] In conclusion, I find that Mr. Hart has not established a significant unfairness that would entitle him to an unequal division of the proceeds of the family home. The proceeds in trust should therefore be distributed equally between the parties, subject to the requirement to pay off the remaining family debt in the form of the joint Visa and the adjustments required by these reasons.

Pension and RRSP

- [37] The only pension and retirement savings assets at issue are in Mr. Hart's name. He has an occupational pension from his years as a journeyman partsman, a Sunlife RRSPL, and an RRSP in his name.

- [38] Mr. Hart takes no issue with the division of his occupational pension as a journeyman partsman for the portion accruing while the parties lived together. The portion of this plan that is family property is the amount that was earned and accrued between October 30, 1996 and April 26, 2015. The pension shall be divided and Ms. Hart is entitled to an equal share of that pension earned and accrued in this time frame. If the parties cannot settle the term of the order dividing the pension, they may apply for those orders.
- [39] The equal division of the Sunlife RRSPL also does not appear to be in issue. The Sunlife RRSPL shall be divided equally through a spousal rollover to Ms. Hart of half the amount.
- [40] The parties take different positions on the division of the RRSP in Mr. Hart's name, which I understand has a value of something more than \$60,000.
- [41] Mr. Hart agrees to its equal division, but advances an excluded property claim for RRSP contributions that he says were made before the parties began living together in the amount of \$12,000. Ms. Hart says the evidence only establishes an excluded claim of \$3,500 in this regard.
- [42] Mr. Hart relies on CRA documents showing that he received a \$4,000 RRSP tax deduction in 1993, and \$4,000 contributions in each of 1994 and 1995.
- [43] Ms. Hart relies on Mr. Hart's RRSP bank statement in early 1997 showing a GIC with a value in the amount of \$3,542 in March 1997 purchased in February 1995. She says that is the only thing that is listed as an RRSP in that bank statement and he must have removed the additional funds prior to that date. Mr. Hart says that the account statement Ms. Hart relies upon must be incomplete.
- [44] I have reviewed the documentary evidence available to me of Mr. Hart's RRSP contributions. On the evidence, I find that Mr. Hart did make a series of \$4,000 investments in the three years prior to the parties moving in together in October 1996. In that month, Mr. Hart paid a \$15,000 down payment on the house the parties moved into.
- [45] I have also reviewed the 1997 bank statement for Mr. Hart's RRSP. It shows the \$3,542 GIC. However, it also shows another \$4,000 GIC maturing in February 1997. It then shows that \$4,000 with interest being immediately transferred from the RRSP account to Mr. Hart's savings account.
- [46] On all the evidence I find that both the \$3,542 GIC and the \$4,000 GIC shown as maturing in February 1997 were most likely already in Mr. Hart's RRSP account at the time the parties moved in together in October 1996. There is no evidence of any additional RRSP amounts remaining at the time the parties moved in together. I find Mr. Hart most likely transferred the other \$4,000 GIC to savings when it matured prior to October 1996, just as he did with the later maturing GIC in early 1997, perhaps to contribute to the \$15,000 down payment on the family home (which has already been acknowledged to be excluded property).

- [47] I therefore find that Mr. Hart has established that of the \$12,000 he contributed to his RRSP's in 1993, 1994 and 1995, \$7,542 remained in his RRSP at the time the parties moved in together in 1996. He has therefore established an excluded amount of \$7,542 in relation to the RRSPs in his name.
- [48] Mr. Hart shall therefore subtract the \$7,542 excluded amount from the total current value of the RRSP, and then pay half of the remaining amount to Ms. Hart into a registered investment specified by Ms. Hart as a spousal rollover.
- [49] Finally, either party may apply for the division of the other parties unadjusted pensionable earning under the Canada Pension Plan.

CHILD SUPPORT

- [50] Ms. Hart seeks ongoing and retroactive child support from Mr. Hart. With respect to both, she says that Mr. Hart should be imputed an income of \$70,000.
- [51] Mr. Hart does not dispute his obligation to pay retroactive and ongoing child support. Nor does he dispute that an income of \$70,000 fairly reflects what he could make if he re-entered the market seeking full employment. However, he says that income should also be imputed to Ms. Hart such that she should bear a more significant share of the special expenses of the children.

Imputation of Income

- [52] The parties are agreed that the Federal Child Support Guidelines govern the amount of child support that is payable by Mr. Hart, and the parties' share of special expenses. Section 19(1) (a) of the Guidelines provides a broad discretion to impute income, including where:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- [53] Imputing income for intentional unemployment or under-employment does not require a finding of bad faith on the part of the payor, only that the payor is not earning to capacity.

Mr. Hart

- [54] Mr. Hart currently lives and works on his father's farm. After his falling out with Mr. Hoover, which cost him his job, he decided not to go back to his previous union job as a journeyman partsman or look for work. His work at his father's farm varies depending on need and season, but his income is fairly steady and he reports an annual income of \$49,000. He also has accommodation, and gets his vehicles and gas paid for by the farm, and he has found some degree of happiness helping his father as he ages, and with the work of the farm. He agrees that \$70,000, is in the range of the wages he was making as a journeyman partsman

between 1999 and 2009 and is a fair reflection of what he could make based on his training and experience should he seek full employment. He has accepted that figure both for the purposes of ongoing child support and the calculation of retroactive support after January 2018 when he lost his job with Mr. Hoover.

- [55] I note that Ms. Hart is not seeking to impute any higher wage to Mr. Hart than his historical salary as a journeyman partsman, and is not seeking any increased amount based on Mr. Hart's more recent and higher salaries. She relied on the case of *Lawson v. Lawson* (1996), 81 O.R. (3d) 321 (Ont. C.A.) where income was imputed to a father who also left his skilled trade after separation to work his family farm.
- [56] I agree with the parties' positions that \$70,000 is a fair and appropriate income to impute to Mr. Hart. While there is no evidence before me of what the current salary of a journeyman partsman would be now based on Mr. Hart's previous years experience, I find the best evidence is Mr. Hart's previous salary in that trade. I also accept that Mr. Hart's salary while working for Mr. Hoover, while much higher, was anomalous and not easily repeated.
- [57] I would therefore impute the amount of \$70,000 in income to Mr. Hart from January 2018 onward for the purposes of calculating his child and spousal support obligations. While child support may be paid on any higher amount earned by Mr. Hart, this imputation of income shall remain in effect while he earns less than that amount.

Ms. Hart

- [58] Although it does not affect her entitlement to child support as the primary caregiver of the children, Ms. Hart's income does affect the division of special expenses for the children. This is a significant issue for Mr. Hart. I will therefore consider whether income should be imputed to Ms. Hart, and if so, how much.
- [59] When the parties separated in April 2015, Ms. Hart was 41 years old. The children would have been approximately 16, 14, 11, and 9. All were in school and the two youngest were very active in numerous sports activities throughout the year, requiring a great deal of coordination, driving, and regional travel. Ms. Hart was a stay at home parent at that time and had no significant income of her own.
- [60] Ms. Hart attended courses at New Caledonia College after high school. Her work experience was largely in retail prior to getting married and a short time doing casual labour for her parents cleaning their offices after the children were born. In 2011, after the youngest child began kindergarten, Ms. Hart began working part-time retail shifts from 9:00 a.m. to 2:00 p.m., 2-3 days a week at minimum wage.
- [61] After the parties separated, Ms. Hart picked up additional retail shifts at other stores. In 2017, she was laid off from one of those positions and received EI for a portion of that year. In 2017, through a combination of part-time minimum wage retail jobs and EI, Ms. Hart earned approximately \$27,000.

- [62] At the end of 2017, she began to work at a regional airline. That company pays her a higher hourly rate and benefits in a permanent part-time position as a local customer service agent and cargo agent for that company. She works a 5 hour shift Monday to Thursday, and a 4 hour shift on Sundays. She is optimistic that the company will be expanding its flights in and out of Prince George which would give her the opportunity to work more hours in the future. Her current annual salary is approximately \$22,400 plus benefits.
- [63] Ms. Hart was challenged on why she was not looking for additional part-time retail work to supplement her part-time income. Her evidence was that while she still has 4 children at home, two of which require driving to school and a full roster of sports activities, the shorter work day allows her to get the children up and ready for school and to drive them there. It would be hard to get another part time job that only required a few hours weekday mornings in any event, and her current work pays significantly better than her previous two retail jobs and includes benefits, so she would not want to give it up. As for her two days off a week these are important for her, especially the Saturday where the children have a lot of activities.
- [64] Mr. Hart challenged Ms. Hart on the need to drive the children to school, and she agreed that a bus is available and the youngest children are likely old enough now to take it. She agreed it was her choice to continue to give them a drive in the morning because that was time she could spend with them. He also challenged her on her ability to rely on her parents, and it is clear that Ms. Hart's parents have given considerably of their time and financial resources to assist with the children after separation. That, however, is not their obligation.
- [65] Finally, Mr. Hart suggested a series of jobs to Ms. Hart that she could be applying for that are available in Prince George including as a correctional services officer that would require availability 24 hours a day. He suggested that Ms. Hart could be working 40 hours a week in retail at minimum wage and earning at least \$27,000 which is more than she is currently earning. He says her income should be imputed on that basis, or on the basis that she might find another full-time job that pays more than minimum wage.
- [66] The law is clear that parents must do their best to earn money to support their children and should not be intentionally underemployed. However, the law does not require a person to take a less skilled job at a lower hourly rate in order to obtain more hours.
- [67] Ms. Hart has shown a significant willingness to work toward financial independence. She is not receiving spousal support, and may not receive such support for a number of years depending on how long the children remain dependant and living with her.

- [68] Although she is currently earning less than she may have made had she continued to seek full-time retail work, her current job position also includes both benefits and a more reasonable prospect of increases to her salary over time. It also is consistent with her continued primary responsibility for four children that live at home, including two children who remain in public school, and who continue to require her care.
- [69] At this time, Ms. Hart's income only affects the division of special expenses for the children under the Guidelines. She is providing for almost all of their daily care and housing. However, over time and as the children grow up, her income will also affect her claim for spousal support (which I discuss below).
- [70] I consider that it is in the best interests of both the children and Ms. Hart that she remain in her current job with its growth potential, benefits and better hourly pay in the longer term. While this means that she has a lower annual income, it would not be in the best interests of the children to require Ms. Hart to give up her current position for a retail position that does not have the same future growth potential, hourly rate or benefits.
- [71] I therefore find that it is not appropriate to impute additional income to Ms. Hart at this time.

Ongoing Child Support

- [72] Although the eldest child has returned home to live with Ms. Hart while she works to save money for her post-secondary education, Ms. Hart is not seeking child support in relation to her.
- [73] Applying the Guidelines applicable to his income and 3 children, Mr. Hart is required to pay \$1,422 per month in child support to Ms. Hart while there are three children under the age of 19 living with Ms. Hart. Mr. Hart takes no issue with this calculation or obligation.

Retroactive Child Support and Special Expenses

- [74] Mr. Hart agrees that based on his income up to trial for the years 2015 to the end of February 2019, he owes Ms. Hart \$26,489 in retroactive child support. In the event that Mr. Hart has continued not to pay child support for the months of March, April, May and June 2019, that amount will have increased at the rate of \$1,422 per month to \$32,177 to the end of June 2019.
- [75] The more difficult issue, and one that consumed the most trial time, is the division of special expenses during this time.

- [76] Mr. Hart says that the amounts claimed by Ms. Hart, in particular for sports tournaments where the children traveled to compete, are overstated, and should be divided 70/30. On the basis of his calculations of what was appropriately claimed on Ms. Hart's part, and discounting his expenses when he took the children to tournaments, and based on a 70/30 split, he says that he owes \$6,317 in retroactive special expenses.
- [77] Ms. Hart concedes that there was some inadvertent double counting on her part and adjusted her retroactive claim in that regard. However, she says that Mr. Hart's own tournament expenses are inflated. On the basis of the receipts in evidence and a 75/25 split of expenses, she claims \$9,787 in retroactive special expenses.
- [78] I will first address the appropriate apportionment of the special expenses based on the parties' incomes or imputed incomes between 2015 and these reasons.
- [79] In 2015, Mr. Hart's income was \$113,400. In 2016 and 2017 it was approximately \$82,000. In 2018 I have imputed an income to Mr. Hart of \$70,000.
- [80] Ms. Hart's income was approximately \$22,000 in 2015, 2016 and 2018, and \$27,000 in 2017 when it was supplemented by EI benefits. I have determined that it is not appropriate to impute additional income to her during this time.
- [81] Based on the parties' relative incomes, the Guidelines suggest an apportionment of 84/16 and 79/21 for 2015 and 2016 respectively, and a 75/25 split for 2017 and 2018.
- [82] I find that Ms. Hart's calculations on the basis of a 25/75 split are appropriate for retroactive special expenses and I find that Ms. Hart's revised calculations properly reflect the expenses proven by each party at trial, though I would allow money for gas to Mr. Hart for the tournament he took the children to.
- [83] I find Ms. Hart is entitled to payment from Mr. Hart in the amount of \$8,900 in retroactive special expenses.

Special Expenses

- [84] Based on the parties' current incomes, division of special expenses shall be on a 75/25 split for 2019, with Mr. Hart paying 75% of the special expenses, and Ms. Hart paying 25%.
- [85] Special expenses shall include, but are not necessarily limited to:
- a) medical expenses including prescriptions, eye care, dental care on the basis of the net costs after the application of Ms. Hart's benefits;
 - b) School trips of over \$50 for Matthew and Adam, including the French exchange;
 - c) Sport registration fees over \$50;
 - d) Tournament costs for the two youngest children; and
 - e) Post-secondary tuition and book costs for any child under 19.

- [86] One of the more difficult issues for the parties is the costs of the children's various sport tournaments. These tournaments generally require travel by car, meal and hotel expenses. The parties are agreed that there should be a cap on the number of tournaments and the overall expense of each of them in a year for the purposes of sharing in their cost as special expenses.
- [87] The parties agreed that there should be no more than five tournaments between all the children that will be a shared special expense, and that Ms. Hart is entitled to recover her costs for three tournaments a year, and Mr. Hart for two. The shared tournament costs shall be capped at \$1,000 per tournament. I further direct that the daily costs of accommodation and meals that are recoverable on a 75/25 split shall not exceed \$300 per day. Tournament fees and gas would be in addition to these amounts, but the \$1000 cap would apply.

Conclusion on Retroactive Child Support

- [88] Mr. Hart shall pay Ms. Hart a total of \$35,389 in retroactive child support including special expenses to the date of trial. Factoring in Mr. Hart's requirement to have paid child support for the months of March, April, May and June 2019, that amount is now \$41,077.

PARENTING COORDINATOR

- [89] The parties demonstrated considerable difficulty in communicating over the course of the trial. They agreed that they do not communicate well, and that they would prefer to engage the assistance of a parenting coordinator to address future disagreements, including issues that may arise as a result of new or disputed special expenses for the children.
- [90] Justice Groberman wrote on behalf of the majority of the Court of Appeal in *Fleetwood v. Percival*, 2014 BCCA 502:
- [45] It is apparent, both from the language of the statute and from the legislative debates on the provisions, that the Legislature was interested in establishing a new option for resolving disputes between parents in high-conflict situations.
- [46] Court procedures are not always conducive to the successful resolution of such disputes, and they can become intractable, particularly where animosity between the parties is entrenched. Sometimes, such disputes become bogged down in the complexity and rigidity of litigation processes. A more flexible resolution process may be desirable.
- [91] Based on the submissions of the parties and the very apparent inability for them to effectively communicate directly, I am satisfied that the parties need assistance to work together towards their children's best interests.

- [92] As a result, I have concluded that a parenting coordinator should be appointed to assist the parties in moving forward on decisions respecting their children. I find that a parenting coordinator will likely be the most effective and inexpensive means for resolving issues respecting the children. Although a parenting coordinator costs money, they will be less expensive, and involve less anxiety, than further court applications. A parenting coordinator can also make decisions quickly as issues arise.
- [93] I therefore order that the parties are to engage the services of a parenting coordinator to assist them in:
- a) improving their communication, and without limitation assisting in the discussion of significant decisions related to the children;
 - b) resolving extracurricular issues regarding the children;
 - c) assisting the parties to determine child support and special expense requirements for children over the age of 19 where applicable; and
 - d) encouraging them to resolve parenting disputes without the need for court intervention.
- [94] The initial appointment should be for a period of at least one year. The parenting coordinator will have all the powers set out in ss. 17-19 of the FLA.
- [95] The parties shall share the cost of the parenting coordinator equally.

SPOUSAL SUPPORT

- [96] Ms. Hart seeks an order granting her entitlement to spousal support at the mid-range level in accordance with the Spousal Support Advisory Guidelines [SSAG]. She acknowledges that, given Mr. Hart's imputed income of \$70,000 and with three children in her primary care under 19, there is no amount attributable to spousal support under the SSAG as the child support requirements take priority. However, Ms. Hart seeks that an order be made at this time awarding her \$1 a year in spousal support, and declaring her ongoing entitlement and Mr. Hart's ongoing obligation to pay spousal support, such that as the children no longer need support an amount of support would also be payable to her.
- [97] Ms. Hart argues that she qualifies for spousal support on both a compensatory and a non-compensatory basis, as outlined in the case of *Chutter v. Chutter*, 2008 BCCA 507.
- [98] I agree that this marriage, where Ms. Hart stayed home to raise the four children of the family until they were school aged, and worked only part-time at minimum wage once they were at school, engages the principles of compensatory and needs based spousal support. The evidence establishes that both the parties agreed that Ms. Hart would be the one to stay home with the children of the marriage. The parties had four children over the space of 7 years. While Mr. Hart made valuable contributions to family life throughout this time, the raising of four children is a very significant job and required Ms. Hart to make sacrifices in terms of her ability to advance her own income earning potential. When the marriage

dissolved, Ms. Hart was at a significant income disadvantage.

[99] The SSAG indicates a time range for the payment of spousal support based on the length of this marriage of 9.25 to 18.5 years. The parties lived together more than 18 years, and this is a significant amount of time. However, it is also clear that Ms. Hart is resourceful, employable, and has begun the process of reclaiming her financial independence. She was 41 at the time of the dissolution of the marriage, and has found good (if part-time) employment. It has now been four years since the parties separated. I consider that Ms. Hart's entitlement to spousal support should remain in place for another ten years, to the end of 2030.

[100] In summary, I declare that Ms. Hart is entitled to spousal support on both a compensatory and non-compensatory basis. I set that support at the mid range under the SSAG to the end of 2030. While child support amounts exceed the amounts that would give rise to spousal support payments, Mr. Hart shall pay Ms. Hart spousal support of \$1 per month, and that monthly amount shall be increased in accordance with the SSAG as the children cease to be entitled to support.

SUMMARY OF ORDERS

[101] In conclusion, I make the following orders:

- a) Pursuant to s. 12 of the Divorce Act, Kristen Mae Hart and Patrick Keith Hart, who were married at Prince George, British Columbia, Canada, on August 29, 1998, or divorced from each other, the divorce to take effect on the 31st day after the date of this order;
- b) That Kristen Mae Hart and Patrick Keith Hart ceased to cohabit as husband and wife on April 26, 2015;
- c) Kristen Mae Hart and Patrick Keith Hart are the guardians of the children under section 39 (1) of the FLA;
- d) The children will primarily reside with Ms. Hart, with the respondent having reasonable parenting time as arranged with the children, by consent;
- e) The parties will engage the services of a parenting coordinator for a minimum period of one year to assist the parties with the following:
 - i. improving their communication, and without limitation assisting in the discussion of significant decisions related to the children;
 - ii. resolving extracurricular issues regarding the children;
 - iii. assisting the parties to determine child support and special expense requirements for children over the age of 19 where applicable; and
 - iv. encouraging the parties to resolve parenting disputes without the need for court intervention.

- f) The cost of the parenting coordinator shall be shared equally between the parties;
- g) Mr. Hart is imputed to have the gross annual income of \$70,000;
- h) Mr. Hart will pay to Ms. Hart the sum of \$1,422 per month for the support of the children commencing July 1, 2019 and continuing on the first day of each and every month thereafter for as long as the children are eligible for support under the FLA or until further court order;
- i) Mr. Hart will pay to the claimant 75% of the children's special and extraordinary expenses, and Ms. Hart will pay Mr. Hart 25% of the children's extraordinary expenses, within 15 days of being provided for the receipt of such expense, and those expenses will include:
 - i. medical expenses including prescriptions, eye care, dental care on the basis of the net costs after the application of Ms. Hart's benefits;
 - ii. School trips of over \$50 for Matthew and Adam, including the French exchange;
 - iii. Sports equipment and registration fees over \$50;
 - iv. Tournament costs for the two youngest children of no more than five tournaments per year, with no more than three compensable tournaments attended by Ms. Hart and two tournaments for Mr. Hart each year, at a cost of no more than \$300 per day plus gas and fees, and a total cost of no more than \$1,000 per tournament; and
 - v. Post secondary tuition and book costs for any child under 19.
- j) Special expenses for any children of the marriage over 19 shall be discussed between the parties, with the assistance of the parenting coordinator;
- k) Ms. Hart is entitled to spousal support under the SSAG at the mid-range up to and including the year 2030;
- l) Mr. Hart will pay to Ms. Hart for her support the sum of \$1 per month in spousal support commencing July 1, 2019 and continuing on the first day of each and every month thereafter, with the monthly amount to be increased in accordance with the SSAG as each child becomes no longer qualified for child support;
- m) The net sale proceeds from the sale of the former family residence at 3051 Seton Crescent, Prince George, British Columbia currently held in trust shall be divided equally between the parties subject to the following payments and adjustments:
 - i. Before division of the net proceeds held in trust, the current balance of approximately \$3,200 jointly owing under the RBC Visa will be paid from the funds in trust and the account will be closed;
 - ii. The following funds shall be paid to Ms. Hart from Mr. Hart's portion of the funds in trust in the following order;

- (1) The amount of \$51,000 shall be paid to Ms. Hart representing an equal division of all family property (other than pension and RRSP assets and the family home), including tax credits and liabilities, interest payments on loans, repayment of the Hoover loan, house contents, vehicles, utilities, and Mr. Hart's excluded property claims; and
 - (2) The sum of \$41,077 in retroactive child support including special expenses up to and including June 2019 shall be paid to Ms. Hart;
- iii. Any amounts owed to Ms. Hart by Mr. Hart that exceeds the amount in trust shall be treated as child support arrears, and shall be payable by Mr. Hart to Ms. Hart by December 31, 2019;
- n) The portion of Mr. Hart's Operating Engineers Pension Plan Policy Number 219-9105 accrued between October 30, 1996 and April 26, 2015 is family property and shall be divided equally in accordance with part 6 of the FLA and this order, and the parties must each pay half of any administrative fees charged for dividing this pension;
 - o) Either party may apply to court for any further directions required with respect to the division of this pension;
 - p) The funds in Mr. Hart's RRSP, less the amount \$7,542 which is excluded property, are family property as defined in the FLA, and Mr. Hart shall transfer one half of this family property to Ms. Hart by way of a spousal rollover under section 146(16)(e) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.);
 - q) The funds in Mr. Hart's Sun Life locked in RRSPL are family property, and Mr. Hart will transfer one-half of the amounts in this account to a qualifying account to be specified by Ms. Hart by way of a spousal rollover pursuant to the Income Tax Act; and
 - r) Either party may apply for the division of the parties and adjusted pensionable earnings under the Canada pension plan after their divorce.
- [102] The differences between the parties were not as significant as originally anticipated by each of them once Mr. Hart was able to fully articulate his position in closing arguments at trial. Many issues were ultimately resolved by consent, including the parenting arrangement and the imputation of income to Mr. Hart. The parties were also remarkably close in their final accounting of the division of family property and debt, other than the division of the proceeds of the family home.
- [103] However, on the key issues that remained in contention, including the equal division of the family home, Ms. Hart was successful. She would therefore generally be entitled to her costs of the proceeding. I make that order subject to any offers of settlement or other matters that I should be made aware of. Should the parties wish to speak to this order for costs, they must contact the registry within 30 days and arrange through the registry for further submissions to be made before me in this regard. Otherwise, Ms. Hart shall have her costs of this matter at the ordinary scale.

"Marzari J."

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