

CANADA / JUDGMENT

Howardson v. Howardson

2020 BCSC 1842

COURT

Supreme Court of British Columbia

DECIDED

26 November 2020

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2020 BCSC 1842 Howardson v. Howardson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Howardson v. Howardson,

2020 BCSC 1842

Date: 20201126

Docket: E6743

Registry: Chilliwack

Between:

Jana Michelle Howardson

Claimant

And

Barrie Allan Howardson

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Claimant:

M. Walters

Counsel for the Respondent:

M.G. Parent

Place and Date of Hearing:

Chilliwack, B.C.

October 6 and 9, 2020

Place and Date of Judgment:

Chilliwack, B.C.

November 26, 2020

- [1] The claimant, Jana Howardson, was born on October 15, 1963. She owns and operates two sales businesses.
- [2] The respondent, Barrie Howardson, was born on November 5, 1964. He is an electrician and maintenance supervisor.
- [3] The claimant and the respondent were married on March 11, 1989, and had two children, a daughter Christa, born March 26, 1990, and a son Jake, born May 28, 1992.
- [4] The parties separated on January 26, 2007, but remained in the matrimonial home until June 27, 2007 when they executed a separation agreement ("the agreement").
- [5] The parties were divorced by this Court pursuant to an order dated December 6, 2010, which took effect 31 days thereafter.

The Separation Agreement

- [6] The agreement was filed in the Provincial Court of British Columbia and in this Court on October 5, 2010. The agreement states that it is a final settlement of all issues arising out of the parties' relationship, including the issues of child support, spousal support and division of property and debts. It also states that the claimant and the respondent were to share custody and have joint guardianship of Christa and Jake.
- [7] The following terms of the agreement are of some relevance for the purposes of the applications before me:

Recital "C"

The parties have each worked throughout the relationship and expect their employment to continue.

- (1) JANA is an esthetician who earns approximately \$19,300.00, and expects to earn a similar or higher income in the future.
- (2) BARRIE is a maintenance superintendent who earns approximately \$135,000.00, and expects to earn a similar or higher income in the future.

...

4. (a) The parties agree that the Children will reside with each parent approximately 50% of the time, even weeks with Jana and odd weeks with Barrie with exchanges to be on Mondays after school and in the event that there is no school, Mondays at 6:00 p.m.
- (b) The parties agree to consider the wishes of Christa and Jake in determining any changes in residence schedules.
6. BARRIE's income as stated in recital C ("BARRIE's Guideline Income") will be used for determining child support for the Children in accordance with the Federal Support Guidelines.
7. (1) BARRIE will, commencing May 30, 2007, and continuing on the 30th day of each month thereafter pay to Jana as child support for the children (the "Child Support"):
 - (a) the sum of \$1,575.00 per month,
8. BARRIE shall pay 100% of the Special or Extraordinary Expenses and these Special or Extraordinary Expenses are defined to mean:
 - (a) any health related expenses for the children that exceed insurance reimbursement, including diabetic prescription drugs, other prescription drugs, orthodontic and dental treatment.
11. The obligation to pay Child Support ceases in respect of a Child who:
 - (a) marries,
 - (b) becomes self-supporting, or
 - (c) becomes 19 years old, unless the Child remains a "child of the marriage" within the meaning of the Divorce Act because of inability to become self-supporting due to illness, disability, the pursuit of education, or other cause.
- 13 (1) The parties will review Child Support and, if necessary, revise it "to ensure that it accords with the requirements of the Federal Child Support Guidelines by June 30th of every third year from the making of this Agreement, with the first review to be completed by June 30, 2010.
- 14 (1) BARRIE shall pay to JANA for JANA's support, \$2,925.00 per month (the "Spousal Support"), commencing on May 30, 2007 until May 31, 2019, after which time JANA's entitlement to spousal support shall terminate absolutely.
- [8] At the time the parties registered the separated agreement, the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] was in force. The parties were permitted to register the separation agreement pursuant to s. 122 of the FRA and the Supreme Court Family Rules, B.C. Reg. 169/2009 [Family Rules].
- [9] The FRA preceded and was essentially replaced by the Family Law Act, S.B.C. 2011, c. 25 [FLA], in stages, following 2011. Unless the transitional provisions of the FLA state otherwise, the FLA applies to family proceedings, even those commenced under the FRA.

The transitional provisions permit parties who would otherwise have been subject to the FLA to proceed under the FRA for limited matters, such as property division. However, there are no transitional provisions relating to spousal or child support: *Halliday v. Halliday*, 2015 BCCA 82 [Halliday] at para. 44, and *A.P.O. v. A.A.A.*, 2014 BCSC 1567 [A.P.O.]. In *A.P.O.*, Madam Justice Brown held at para. 79:

- [79] A.A.A. seeks spousal support for five years pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2d Supp.) and the FRA. Before I assess the merits of the claim, it is important to note that unlike the division of property, where the transition provisions set out in the FLA state that the FRA applies to property division, there are no similar provisions for spousal support. Accordingly, though this action was started prior to the coming into force of the FLA, since March 18, 2013, the FLA applies rather than the FRA to spousal support: *R. (L.J.) v. R. (S.W.)*, 2013 BCSC 1344 (B.C. S.C.) at para. 37; *Ross v. Ross*, 2013 BCSC 1716 (B.C. S.C.) at para. 74.
- [10] Presently, registration of an agreement respecting child and spousal support in this Court is permitted by ss. 148 and 163 of the FLA, and the Family Rules. Registering or filing a separation agreement gives the court the power to enforce it: see Rule 2-1(3) and ss. 148(2) and 163(3) of the FLA.
- [11] Filing an agreement only makes the agreement enforceable as if it were contained in an order, it does not actually become an order, and is not deemed to be one: *Cominetti v. Cominetti*, [1993] B.C.J. No. 1486 (S.C.); *Stevens v. Stevens*, 2013 BCSC 1899 [Stevens] at para. 64; and *P.K.C. v. J.R.R.*, 2014 BCSC 932 at para. 190. Therefore, although the agreement was filed in this Court, there is currently no court order for spousal or child support in place.

Background

- [12] The respondent brought his arrears for child and spousal support payments under the agreement up to date in February 2010, when he sold the former matrimonial home. It was his evidence that he was unable to make the agreed child and spousal support payments after March 2010.
- [13] The claimant's evidence was that the arrears of maintenance began after April of 2010, and I will accept her evidence on this issue.
- [14] On April 9, 2010, the respondent filed his application to change or cancel his support obligations in the Port Coquitlam Registry of the Provincial Court of British Columbia. His application was ultimately adjourned and the parties were advised the matter would have to be determined in this Court.

- [15] On September 29, 2010, the parties attended a Judicial Case Conference in this proceeding. The respondent was ordered to file and deliver his Form 8 Financial Statement within 45 days, with all requisite attachments. He was also ordered to file and deliver his response to the family claim within 21 days or to withdraw his appearance, should he wish to allow for the divorce by desk order. He filed his notice of withdrawal of his appearance on October 20, 2010.
- [16] In March 2017, the claimant enrolled in the Family Maintenance Enforcement Program ("FMEP"). A notice of filing from FMEP from May 12, 2017 states the respondent's total arrears were \$349,596. This figure does not include arrears for payments for Christa for the period September 2011 to August 2012 when she was in Australia. It is unclear whether the figure includes arrears for payments for Jake when he was in Australia.
- [17] On September 6, 2017, the respondent commenced a Notice of Family Claim seeking to set aside or replace the agreement and to incorporate the spousal and child support provisions in the agreement into an order and also seeking an order cancelling arrears of spousal and child support pursuant to the FLA and Divorce Act, R.S.C. 1985 c. 3 (2nd Supp.). His application was not proceeded with.
- [18] A letter from FMEP dated October 10, 2019 states the respondent's total arrears owing are \$359,922.53, which includes interest of \$28,011.33.
- [19] A letter from FMEP dated November 14, 2017 states that the amount of \$2,950 per month is currently being deducted from the respondent's employment income and is being applied to reduce the support arrears. The amount presently held by FMEP from these deductions is unclear.

The Applications of the Parties

- [20] On August 22, 2018, the respondent filed an application seeking the following orders:
1. An order setting aside or replacing with an order made under Part 7, Division 4 the spousal support provisions of the Separation Agreement made June 27, 2007 and filed October 5, 2010 in this family law case on the grounds that the Separation Agreement is significantly unfair on consideration of the following:
 - a. the length of time that has passed since the Agreement was made;
 - b. the changes, since the Agreement was made, in the condition, means, needs or other circumstances of the parties; and
 - c. the degree to which the spouses relied on the terms of the Agreement.
 2. Further, or in the alternative, an order cancelling arrears of spousal support in whole or in part together with any interest and penalties, owing under the Separation Agreement made June 27, 2007.

3. Further, or in the alternative, an order cancelling arrears of child support in whole or in part together with any interest and penalties, owing under the Separation Agreement made June 27, 2007.
 4. Further, or in the alternative, an order incorporating into an order the spousal support and child support provisions of the Separation Agreement made June 27, 2007 and an order cancelling arrears of spousal support and child support in whole or in part together with any interest and penalties.
 5. Costs.
- [21] The respondent's application was scheduled for hearing on October 29, 2018, but did not proceed at that time.
- [22] On January 9, 2020 the claimant filed an application seeking the following orders:
1. That the Respondent be required to obtain leave of the Court before bringing any further Application before the Court;
 2. That the arrears of child and spousal support under the parties Separation Agreement dated June 27, 2007 (and filled herein on October 5, 2010) be fixed at \$359,922.52 less any payments credited to the Respondent after October 10, 2019; and
 3. Claimant's Expenses, Special Costs and/or Costs.
- [23] The claimant's counsel described the application as one "to fix the arrears of child and spousal support, that is to enforce the child and spousal support terms of the parties' Separation Agreement".

Jurisdiction

- [24] The court may set aside all or part of an agreement respecting spousal support pursuant to s. 164 of the FLA.
- [25] An application to set aside or replace the whole or any part of an agreement filed under Rule 2-1 may be made pursuant to Rule 10-5(2)(c) of the Family Rules.
- [26] Rule 10-5(1) states that to apply for an order referred to in Rule 10-5(2) one must apply in accordance with Rule 10-6 by filing a notice of application.
- [27] In Halliday, Mr. Justice Goepel cautioned:
- [1] Family law cases contain many traps for the unwary. The Supreme Court Family Rules (the "Family Rules") and the different legislative regimes are complex. Litigants must select with care the appropriate procedures under Family Rules. They must be mindful in seeking relief of the distinctions within and differences between federal and provincial legislation. While the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the Family Law Act, S.B.C. 2011, c.25 (the "FLA"), and the Family Relations Act, R.S.B.C. 1996, c. 128 (the "FRA"), to the extent that it still applies, contain many similar provisions, they are not identical.

- [28] At paras. 32-38, Goepel J.A. explained the relevant time limits to bring applications regarding spousal support under the different legislative regimes:
- [32] Under the current family law regime, spousal support is available pursuant to an order made under either s. 15.2 of the Divorce Act or s. 165(1) of the FLA. I note that the FLA came into force on March 18, 2013. Prior to that time, spousal support under the provincial regime could be sought pursuant to the provisions of s. 93 of the FRA.
- [34] The FRA and FLA contain provisions that effectively limit when claims for division of property or applications for spousal support can be brought .. there was no jurisdiction to hear applications for spousal support or division of assets under the FRA if proceedings were brought more than two years after the parties were divorced
- [35] The Divorce Act definition of "spouse" includes a former spouse for the purposes of child and spousal support by way of s. 15. There are no express limitations in the Divorce Act concerning the time pursuant to which a party may bring an application for spousal support. The existence of an agreement between the parties governing spousal support is not a bar to an application for support. If the parties do have a separation agreement, then the agreement can, by way of s. 15.2(4)(c), be taken into account by the court; the court will have to determine whether spousal support should, regardless of the terms of the agreement, be ordered. This requires the court to engage in the analysis set out in cases such as *Miglin v. Miglin*, 2003 SCC 24, *Hartshorne v. Hartshorne*, 2004 SCC 22, and *Rick v. Brandsema*, 2009 SCC 10.
- [36] The FLA has taken a somewhat different approach with regard to limitation periods. The FLA, like the Divorce Act, defines "spouse" as including a former spouse... The relevant provisions are as follows:

Time limits

198(2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,

- (a) in the case of spouses who were married, the date
 - (i) a judgment granting a divorce of the spouses is made, or
 - (ii) an order is made declaring the marriage of the spouses to be a nullity, or
- (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.

- (3) Despite subsection (2), a spouse may make an application for an order to set aside or replace with an order made under Part 5, 6 or 7, as applicable, all or part of an agreement respecting property or spousal support no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- [37] Section 198(2) of the FLA requires, in the case of spouses who have been married, that a spouse who seeks an order to divide property or family debt, a pension, or for spousal support bring the claim within two years of the parties' divorce.
- [38] Section 198(3) concerns applications where the parties have entered into an agreement respecting property or spousal support. In those situations, if a party seeks to set aside the agreement or replace the agreement with an order under Part 5, 6 or 7 of the FLA, the application must be brought within 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- [29] Given the two-year time limit in ss.198(2) and (3) of the FLA discussed in Halliday, the respondent conceded that he could not pursue the first order listed in his application to set aside or replace the spousal support provisions of the agreement under the FLA and abandoned that part of his application.
- [30] Instead, the respondent relies upon the provisions of the Divorce Act as the basis for his application. He asks for an order incorporating the spousal and child support provisions of the agreement into an order, and an order cancelling his arrears in whole or in part pursuant to s. 17 of the Divorce Act.
- [31] The respondent contends that his application under the Divorce Act is based upon the approach discussed by Goepel J.A. in Halliday:
- [45] To summarize, therefore, the Wife can seek spousal support either under the Divorce Act or the FLA. Whether her claim is barred under the FLA depends on whether the claim was brought within two years after she first discovered, or reasonably ought to have discovered, the "grounds" for making the application. Even if the Wife's claim is barred under the FLA, she could nevertheless seek relief under the Divorce Act, there being no limitation provision in it regarding spousal support.
- [64] ... The Wife is at liberty to bring on for hearing an application to set aside the Separation Agreement. She would be well advised to amend that application to include a claim for spousal support under the Divorce Act
- [32] However, Halliday was a case where there was no prior application for or award of spousal support, and what Goepel J.A. appears to have contemplated was an initial application for such support to continue on an ongoing basis. In my view, an application of that nature must be brought under s. 15 of the Divorce Act.

[33] There is a robust body of case law in the context of varying ongoing support under the Divorce Act. Those authorities state the proper procedure is to bring an initial application for a support order under s. 15 where there is no existing order respecting support, not s. 17: see for example *Stevens*; *Stobo v. Stobo*, 2016 ONSC 5805; and *Imrie v. Imrie*, 2001 BCSC 1443. This analysis would be different, since the court must consider a list of factors when ordering child support under s. 15.1 or spousal support under s. 15.2, with a separation agreement being just one factor: *Stevens* at para. 66.

[34] However, there is a dearth of authority to grant a court order on a retroactive basis for the purpose of cancelling past accumulated arrears where no ongoing payments are sought.

[35] The respondent relies on *Pousette v. Pousette*, [1993] B.C.J. No. 1105. At page 18, Mr. Justice Lysyk wrote, in part:

.. Section 15 of the Divorce Act, 1985 provides authority to make a support order in the first instance and s. 17 provides authority to vary such an order. Nothing in that enactment deals expressly with the varying of a contractual arrangement for spousal maintenance. What the court may do, if it sees fit, is make a support order under s. 15 which is inconsistent with the parties' agreement. Where, however, the court is asked, as it is by Mr. Pousette in this case, to eliminate or to reduce the amount of maintenance stipulated for by contract, issues may arise concerning election of remedy or relating to the question of whether the contract survives or merges with the court order. Such issues have been considered in a number of decisions of this court: see, e.g., *Coburn v. Coburn* (1971), 5 R.F.L. 1, *Furber v. Furber* (1972), 9 R.F.L. 289 and *Mitchell v. Mitchell* (1982), 35 B.C.L.R. 392.

Mr. Pousette's primary position is that the decree nisi contains an order for support, albeit unquantified, which can now be the subject of an application to vary under s. 17... His position in the alternative is that the court has jurisdiction to incorporate the support provisions of a separation agreement in a divorce decree retroactively for the purpose of allowing a variation proceeding under s. 17. Doubt has been expressed concerning the court's jurisdiction to do this: *Payne on Divorce* (2nd ed.; 1988), at p. 127. However, there is authority (cited by the author) which supports such jurisdiction and which is binding on this court: *Posener v. Posener* (1984), 49 B.C.L.R. 184 (S.C.), *aff'd* (1984), 4 D.L.R. (4th) 385 (B.C.C.A.), *lv. to app. to S.C.C. den.*, 55 N.R. 159 n. See, also *Leroux v. Leroux*, [1990] B.C.J. No. 1281, June 5, 1990, B.C.S.C. No. A900719; *Foster v. Foster*, [1992] B.C.J. No. 829, April 22, 1992, B.C.S.C. No. A911913.

[36] In *Zimmerman v. Shannon*, 2006 BCCA 499, the Court of Appeal ruled that this Court does not have the jurisdiction to vary a separation agreement under the Divorce Act; it only has jurisdiction to make an order for support that is inconsistent with a pre-existing agreement. Accordingly, where there is no existing order for support and a party wishes to vary the support agreed to, the party must bring an original application under s. 15 to determine the quantum of statutory support entitled.

- [37] Parliament has clearly vested in courts the discretion to review and reject the terms of a pre-existing agreement when making an award for ongoing support by virtue of s. 15 of the Divorce Act: see *Megson v. Megson*, 2014 BCSC 2467 at para. 198; and *Miglin v. Miglin*, 2003 SCC 24 at para. 51. However, nothing in the Divorce Act suggests Parliament intended to give courts discretion to consider applications such as that brought by the respondent to retroactively cancel contractual child and spousal support obligations, where the parties' children are no longer children of the marriage, and the parties' agreement no longer obliges or entitles either party to make or receive ongoing support payments.
- [38] There was no initial application before me for either spousal or child support; the claimant being content to rely on the agreement. She opposes the proposition that the agreement be entered as an order of this Court at this late stage, pointing out that no application for such an order has been filed.
- [39] The respondent's applications are therefore dismissed. I find, however, that I should provide some direction as to the arrears that are owing for both child and spousal support.

Child Support Arrears

- [40] In her well-known decision in *Earle v. Earle*, 1999 BCSC 283, Madam Justice Martinson set out the principles to be applied to an application to vary child support:
- d. "My former spouse (partner) delayed in coming to court to enforce payment"
- [34] Delay in enforcement is not, in itself, a relevant factor. There are two reasons for this. First, a child cannot waive his or her right to maintenance, nor can a parent with custody make such a waiver on behalf of a child. Second, very often, all of the resources of the parent with custody -- financial, physical and emotional -- are used up in caring for the child. That parent is not in a position to bring enforcement proceedings.
- [35] A court may consider delay as a factor if the person required to pay can show that the delay has prejudiced him or her in some material way. In order to establish prejudice however, the person required to pay must show not only that he or she could not pay at the time of the application, but also that he or she is unlikely to be able to pay in the future.
- e. "My former spouse (partner) will get a windfall"
- [36] This is sometimes called the rule against hoarding. The law is now clear that it does not apply to the payment of child support arrears. This is because the rule against hoarding invites the person required to pay to disobey the court order directing him or her to pay. It assures the person that if he or she can avoid making those payments for long enough, a court will vary the order for payment so as to reduce or eliminate any arrears. This is contrary to public policy.

- [37] The rule also does not apply because the courts feel that the obligation to pay arrears of maintenance should be enforced in fairness to the parent with custody who has had to bear a disproportionate part of the child rearing expenses. It is also in recognition of the important principle that parents are jointly responsible for child support, and that this responsibility cannot be avoided by delay.
- f. "The children have not suffered because others provided assistance"
- [38] This argument suggests that no harm has really been done. This has also been rejected by the courts. A variation order that reduces or eliminates arrears of maintenance of a child because someone else has provided this financial support, does not recognize the financial obligation of the person against whom the order was made to maintain the child. Such a variation order is inconsistent with the Divorce Act.
- g. "My child does not need the money now"
- [39] This is like the last argument. It also has been rejected. If the quality of life of the child has been diminished, it may be appropriate to compensate the child. This could be done directly by payment to him or her, or indirectly by payments to the parent with custody, for the child.
- h. "My former spouse (partner) agreed that I did not have to pay"
- [40] This argument has been rejected by the Court of Appeal as well. Even if such an agreement exists, it could not be relied upon or enforced because it purports to deny the children the right to support from the person who does not have custody.
- [41] At para. 46, Martinson J. explained that parents have a joint and ongoing legal obligation to support their children and it is the child, not the other parent, who has the right to maintenance. She also confirmed that the payment of maintenance is based on not just what a parent does earn but what a parent can earn.
- [42] In the same paragraph, with respect to variation of an order or agreement to pay child support, Martinson J. wrote that to justify a variation in an order or agreement for child support, there has to be a material change of circumstances, a change that is significant and long lasting. A payor spouse has a heavy duty in asking for a reduction or a cancellation of arrears to show that there has been a significant and long lasting change in circumstances, such that it would be grossly unfair not to reduce them.
- [43] The agreement obliged the respondent to pay child support of \$1,575 per month as well as 100% of their special or extraordinary expenses, until one of the events referred to in para. 11 of the agreement occurred. What is not clear from the evidence before me is just how the parties arrived at the figure of \$1,575 per month.

- [44] The respondent did not pay the claimant for many special or extraordinary expenses for the children. The parties each adduced evidence of payments they made for such expenses, but as the claimant is not seeking any compensation for special or extraordinary expenses; I need not address them in these reasons.
- [45] Beginning in September 2007, Christa lived primarily with the respondent at the family residence in Maple Ridge. At that time, the respondent was travelling back and forth between Vancouver Island and the family residence. He continued to pay the full amount of child support in the amount of \$1,575 per month to the claimant pursuant to the agreement; however, because Christa was living primarily with the respondent, the claimant refunded \$609 per month to him.
- [46] The respondent gave evidence that he signed over the cheques for \$609 from the claimant to Christa. Christa agrees that the cheques were provided to her.
- [47] The claimant swore or affirmed that:

My determination of the amount to pay back of \$609 per month was based on the Federal Child Support Guideline Tables for the Respondent paying for only one child at his disclosed income of \$135,000, which was \$1184/month and for me paying for one child based on my estimated 2017 Income of \$24,000, which was \$220/month, the difference being \$984/month. I understand that the Respondent left this money for Christa every month as she was living in the matrimonial home pretty well alone most of the time as the Respondent spent most of his time on the Island.

- [48] I am prepared to accept that these figures are the correct basis for the support for both children. However, on the evidence before me, I am unable to determine the amount that should have been paid for only one child, if the respondent was only obliged to pay for one.

Christa

- [49] It was the claimant's evidence that for a very short period of time from September 2007 to November 2007 (three months) and then again from January 2008 until June 2008 (six months); Christa resided with the respondent before he sold the former matrimonial home.
- [50] The respondent asserted that in approximately October 2008, Christa and her boyfriend commenced living at the residence of her boyfriend's parents in Nanaimo, and she stayed at her boyfriend's parents into 2009. The respondent also asserted that Christa and her boyfriend then rented their own place in Nanaimo.
- [51] The claimant asserted that Christa was forced to move into paid accommodation while attending university in Nanaimo, which the claimant assisted her with paying.
- [52] Christa turned 19 years of age on March 26, 2009. She attended Vancouver Island University full-time after graduating high school in 2008 until September 2011. She was then registered in a geography degree program.

- [53] The respondent gave evidence that Christa worked part-time at two jobs to pay for her gas, groceries, and day to day expenses while she attended Vancouver Island University.
- [54] Christa benefitted from an education fund of \$12,797.41, which came from money the claimant's parents contributed. The fund was paid to Christa for some of her education costs.
- [55] Between September 2011 and August 2012, Christa took a year off of university and went to Australia.
- [56] From September 2012 until April 2016, Christa attended the University of the Fraser Valley in Abbotsford and lived with the claimant.
- [57] It was the respondent's evidence that from June to November 2014, Christa did not attend university and lived with the respondent in Victoria. At that time, she was registered as a construction electrician apprentice and was interested in obtaining an electrical job at the Victoria Ship Yards.
- [58] Christa was not hired at the Victoria Ship Yards and she left Victoria in November 2014 to live at the claimant's residence and commenced work as a nanny.
- [59] The claimant contends that Christa suffered with anxiety and depression for years and hence took a longer time to become self-supporting. No medical report was filed to confirm this.
- [60] It is clear that Christa has become estranged from the respondent. In a notarized document dated January 15, 2020, she made a variety of very negative statements about the respondent. In the document, she wrote, in part:

I worked a part-time summer job in Whistler for Barrie's company. He regularly billed me out for 12 hours daily, even though I worked much less. I was painting and cleaning. Years later he exaggerated these house [sic] as "electrical apprenticeship" hours; and tried to manipulate my [sic] into attending Camosun College for Electrical Year One in the fall of 2014.

In the fall of 2014, after an argument with my mother regarding accountability (I was skipping school and failing in my classes due to depression and social anxiety - she was trying to help me but I was not yet ready for help), I attempted to reconnect with my father (who had reached out a couple of times over the years) and go live with him on Vancouver island. When I lived with Barrie for the 5 short weeks in Victoria he mentioned to me

While he was in Victoria he was putting a lot of pressure on me to make job/educational changes [sic] to that I did not want to make. He said that I would have to pay him rent (that I could not afford as I was still searching for a job) UNLESS I signed up for the year one electrical apprentice program at Camosun College

- [61] The claimant reported to FMEP that from April 2016 Christa lived with her rent-free while she worked full-time and she has said she is not certain when Christa would return to school to complete her degree. Christa did not complete her degree.
- [62] After April 2016, Christa moved to Alberta. She is now a personal fitness trainer and nutritionist.
- [63] I find that, pursuant to the agreement, the respondent was obliged to pay support to the claimant for Christa until September 2011, with the exception of: the period when she lived with her boyfriend or his parents, which I estimate to be three months; the three months from September to November of 2007 when she lived with the respondent; and the six months from January until June of 2008 when she lived with the respondent. These periods total one year.
- [64] I find that after September 2011, the respondent should have paid child support to the claimant for Christa until June 2014, but not for the period of June to November 2014 when Christa lived with the respondent.
- [65] In *Farden v. Farden*, 1993 BCSC 2570 [Farden] at para. 15, Master Joyce, as he then was, set out a list of factors, often referred to as the Farden factors, to be considered when a claim is made for child support for a child who has reached the age of majority, but is at a post-secondary institution:
- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

- [66] Applying the Farden factors described by Master Joyce, it is difficult to resolve just how much if any of that period the respondent should have paid support for Christa after November 2014. It is unclear whether she was enrolled in a full- or part-time course of studies, but it is clear that she was not diligent about whatever course she had enrolled in, and was financially enabled to do so by the claimant. By her own account, she was not attending her classes, and was certainly capable of employment and indeed was employed for some of that time. I find that she had no real career plan and conclude that she was "simply going to college because she had nothing better to do" as described in Farden.
- [67] That said, she should have had the benefit of some guidance from her father, which I find she was not provided with. Taking the Farden factors into account, I find that the respondent should have paid child support for Christa for one half of the period from November of 2014 until April of 2016.

Jake

- [68] Insofar as Jake is concerned, it is apparent that in the summer of 2007, he expressed an interest in attending a boarding school in Saskatchewan to gain greater hockey skills through the school's hockey program. Jake was accepted as a boarding student for Grade 11 for the 2008/2009 academic year commencing September 2008.
- [69] The respondent paid an \$8,000 deposit and then a further \$8,000 payment in August 2008.
- [70] It was the respondent's evidence that in the summer of 2008, Jake worked for the respondent's company as an electrical apprentice.
- [71] Jake started his Grade 11 year at a boarding school in Saskatchewan in September 2008. He withdrew from the school after one month and returned to live in Maple Ridge. The respondent received at least a partial reimbursement of the funds that he paid to the school, but the parties disagree as to how much was reimbursed.
- [72] I regard this tuition expense as a special or extraordinary expense, so will disregard it for the purposes of assessing the respondent's child support obligations.
- [73] From October 2008 to the spring of 2010, the respondent's evidence was that Jake spent most of his time at the former matrimonial home until it was sold in February 2010.
- [74] After Jake graduated from high school in 2010, he worked at random jobs while playing junior hockey. He turned 19 on May 28, 2011.
- [75] In September 2011, Jake travelled with Christa to Australia where they had work visas. It was the respondent's evidence that Jake worked in Australia for six to eight months as a roofer.
- [76] Jake attended Thompson River University in Kamloops full-time from 2012 to 2014.
- [77] It was the claimant's evidence that Jake then attended a firefighter training school in Texas until June 2014. On his return, Jake worked as an apprentice electrician starting in July 2014.

- [78] I find that with the exception of the time that he was in Australia, the respondent ought to have paid child support for Jake from February 2010 until he completed his training as a firefighter in June 2014. I find that the period for which support payments were not required for Jake while in Australia is seven months.
- [79] I am unable to discern from the evidence before me whether the FMEP calculations of arrears credited the respondent for that period of time, so I will leave it to the parties to sort out the respondent's child support obligations when he was only obliged to pay support for one child, and whether the respondent has been credited for Jake's trip to Australia. If they are unable to do so, they make file written submissions with respect to the child support arrears of no more than 10 pages in length, supported only if necessary by one affidavit of no more than 10 pages.

Spousal Support Arrears

- [80] The FMEP calculation of arrears and correspondence filed by the claimant does not permit me to determine the amount that FMEP presently holds as a result of its collection efforts on the claimant's behalf. Those payments must be credited to the respondent as against his support obligations.
- [81] If the parties are unable to agree on the amounts of spousal support arrears that remain after the application of my findings, they make file written submissions with respect thereto of no more than 10 pages in length, supported only if necessary by one affidavit of no more than 10 pages.

"The Honourable Chief Justice Hinkson"

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