

CANADA / JUDGMENT

I.A.M.M. v. H.F.S.S.

2025 BCSC 1330

COURT

Supreme Court of British Columbia

DECIDED

14 July 2025

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2025 BCSC 1330 I.A.M.M. v. H.F.S.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

I.A.M.M. v. H.F.S.S.,

2025 BCSC 1330

Date: 20250714

Docket: E65454

Registry: New Westminster

Between:

I.A.M.M.

Claimant

And

H.F.S.S.

Respondent

Before: The Honourable Justice Basran

Reasons for Judgment

Counsel for the Claimant:

A. Khaki

The Respondent, appearing in person:

H.F.S.S.

Place and Dates of Trial:

Port Coquitlam, B.C.

March 3-7 and 24, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 14, 2025

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Introduction

- [1] The claimant, I.A.M.M. ("Ms. M."), and the respondent, H.F.S.S. ("Mr. S."), married in Jordan in August 2013. They have a child, F.S., born in December 2015. He is nine years old and in fourth grade.
- [2] The parties and F.S. moved to BC from Jordan in November 2019. Mr. S. was employed in Jordan with Amazon as a software engineer. Amazon relocated him to work in Vancouver, BC and later in Washington State, US.
- [3] The parties separated on March 7, 2022. The primary issues to be decided are:
- a) The possible imputation of income to Mr. S.;
 - b) Child support;
 - c) Section 7 extraordinary or special expenses ("s. 7 expenses");
 - d) Spousal support;
 - e) Division of assets, and
 - f) Divorce.

Credibility Assessment

Legal Principles

- [4] The parties' credibility is an important consideration in this trial. It is therefore useful to set out the principles governing credibility determinations. In assessing the truthfulness of the witnesses' testimony, I am guided by the test set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.):
- [] In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. []
- [5] In assessing credibility, I will apply the factors described by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296:

Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (Raymond v. Bosanquet (Township) (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont. H.C.); [Faryna] v. Chorny, [1952] 2 D.L.R. [354] (B.C.C.A.) [[Faryna]]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ([Faryna] at para. 356).

Credibility of Ms. M.

- [6] Ms. M. testified with the assistance of an interpreter. Her testimony was clear, responsive, coherent, and consistent both internally and externally.
- [7] At trial, Ms. M. testified that Mr. S. spent parenting time with F.S. approximately once a month. In an affidavit sworn on May 6, 2024, she deposed that Mr. S. had parenting time with F.S. a few times a month. When asked about this inconsistency at trial, Ms. M. explained that she made a mistake in her affidavit. Mr. S. had parenting time with F.S. a few times per year, not per month, because for part of the post-separation period, he lived in the US and did not return to Canada monthly.
- [8] Ms. M.'s estimate that Mr. S. spent parenting time with F.S. once per month is her estimate based on the entire post-separation period. I accept this rational and reasonable explanation. It does not detract from Ms. M.'s credibility.

Credibility of Mr. S.

- [9] Mr. S. represented himself at trial. He provided some contradictory evidence. For example, he testified that when he and Ms. M. separated, she told him that he would have to pay her for the rest of his life. Shortly thereafter, Mr. S. gave evidence that Ms. M. told him she did not want anything from Mr. S.
- [10] Mr. S.'s evidence was generally vague, somewhat meandering, and often self-serving. Several times, he contradicted himself. To the extent their testimony conflicts, I prefer the evidence of Ms. M. to that of Mr. S.

Divorce

Legal Principles

- [11] A spouse may commence divorce proceedings in the superior court of any province in which either spouse was habitually resident for at least one year immediately preceding the commencement of proceedings: s. 3(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp).
- [12] A court may grant a divorce on the ground that there has been a breakdown of the marriage: Divorce Act, s. 8(1),
- [13] A breakdown of a marriage is established if the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding.
- [14] In a divorce proceeding, it is the duty of the court, before considering the evidence, to satisfy itself pursuant to the Divorce Act, among other things, that:
- a) there is no possibility of reconciliation of the spouses (s.10(1));
 - b) there has been no collusion in relation to the application for a divorce (s.11(1)(a)); and
 - c) that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines (s.11(1)(b)).

Discussion

- [15] Ms. M. seeks a divorce. Until his closing submissions, Mr. S. seemed to agree to a divorce. However, during his submissions, he indicated that he was opposed to a divorce because he does not think it is in the best interests of F.S.
- [16] The parties moved to Canada on November 29, 2019 and separated on March 7, 2022. They have lived separate and apart for more than one year and at the commencement of this proceeding.
- [17] Ms. M.'s evidence makes it clear that there is no possibility of reconciliation and I am satisfied that there is no collusion. Mr. S. did not dispute this evidence.
- [18] As described later in these reasons, I have made orders for child support, s. 7 expenses, and parental decision making. These constitute reasonable arrangements for F.S.
- [19] Notwithstanding Mr. S.'s late-in-the-day opposition to a divorce, I am satisfied that all of prerequisites for one have been satisfied. Therefore, a divorce order will be granted.

What Parenting Arrangements are in the Best Interests of F.S.?

Legal Principles

- [20] Section 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] outlines that when making an order respecting parenting arrangements, the court must only consider the best interests of the child (children).

- [21] Any order made must "[protect], to the greatest extent possible, the child's physical, psychological, and emotional safety, security and well-being": FLA, s. 37(3).
- [22] Section 37(2) of the FLA sets out the factors for determining the best interests of the child (children), which include the following that are relevant to this matter:
- a) the child's health and emotional well-being: s. 37(2)(a);
 - b) the nature and strength of the relationships between the child and significant persons in the child's life: s. 37(2)(c);
 - c) the history of the child's care: s. 37(2)(d);
 - d) the child's need for stability, given the child's age and stage of development: s. 37(2)(e);
 - e) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities: s. 37(2)(f); and
 - f) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members: s. 37(2)(i).

Factual Findings

- [23] Both during the relationship and since the separation, Ms. M. has been the primary caregiver for F.S. She has been the parent who engages in his day-to-day care and has exercised virtually all the parental responsibilities.
- [24] Ms. M. has been responsible for scheduling all medical and dental appointments for F.S. and taking him to those appointments. She has also been the parent who registered F.S. for school and enrolled him in various activities and has been primarily responsible for taking him to his activities.
- [25] By contrast, Mr. S. has not been actively involved in the care and upbringing of F.S. both during the relationship and since separation. Ms. M. tries to facilitate a relationship between F.S. and Mr. S. However, Mr. S. does not schedule much parenting time with F.S. The evidence shows that Ms. M. contacts Mr. S. to encourage him to spend time with F.S.
- [26] There is evidence that communication between the parties is strained--Ms. M. often messages Mr. S. about matters involving F.S. but Mr. S. does not respond.

Discussion

- [27] The relevant FLA s. 37(2) factors set out above are discussed below.
- a) The child's health and emotional well-being

- [28] F.S. has lived with Ms. M. since his parents separated. Ms. M. has taken steps to ensure F.S.'s health and emotional well-being by organizing her life around his needs. For example, she changed her working hours so that she could drop him off at school in the morning instead of using both before and after school care.
- [29] Ms. M. enrolled F.S. in soccer, karate, chess club, and math tutoring.
- [30] In my view, F.S.'s health and emotional well being are not adversely impacted when he is in the care of either party.
- b) The nature and strength of the relationships between the child and significant persons in the child's life
- [31] Ms. M. has been the primary caregiver for F.S. during the parties' relationship and since separation. She was a stay-at-home parent during the parties' marriage and has continued as F.S.'s primary caregiver.
- [32] F.S. has a strong bond with his mother, Ms. M. This is undoubtedly the result of her significant efforts in caring for him throughout his life and prioritizing his needs.
- [33] Mr. S. has not been consistently involved in the upbringing of F.S. He has chosen to not spend much parenting time with F.S. On balance, I am satisfied that F.S. has a stronger bond with his mother than with his father.
- c) The history of the child's care
- [34] Ms. M. has been F.S.'s primary caregiver since his birth. Since the parties' separation, she has continued doing virtually everything required to care for F.S. She schedules his medical and dental appointments, enrolls him in school and activities, and is the primary contact with his school. Ms. M. consistently attends parent teacher interviews at F.S.'s school three times per year. Mr. S attended two or three of those meetings in the past five years.
- [35] Mr. S. did little to care for F.S. prior to separation and has spent relatively little time with him since then. He has exercised parenting time with F.S. approximately once a month, for relatively short periods of time and has resisted Ms. M.'s attempts to facilitate more parenting time between him and F.S.
- [36] Ms. M. takes F.S. to his various activities and attends his sporting events. On the other hand, Mr. S. does not attend most of F.S.'s activities or games.
- [37] Ms. M. arranges F.S.'s medical and dental appointments and attends them with him. As facilitated by Ms. M., Mr. S. receives updates from medical practitioners on F.S.'s health issues, but Mr. S. does not attend these appointments.

- [38] Mr. S. refused to authorize Ms. M.'s travel with F.S. to Jordan during the summer of 2024. However, Mr. S., who was not working, agreed to care for F.S. for two weeks when Ms. M. travelled to visit her family in Jordan on her own. After she returned, Mr. S. continued caring for F.S. from Monday to Friday so that Ms. M. could continue working. Before and after school care was not available during the summer months. In July and August of 2024, Ms. M. cared for F.S. on weekends after she returned to BC from her trip to Jordan.
- c) The child's need for stability, given the child's age and stage of development
- [39] F.S. will benefit from a specified and consistent parenting schedule. Ms. M. works weekdays. She has been the most stable and consistent influence in F.S.'s life. In my view, weekly weekend visits with Mr. S., as suggested by Mr. S., will benefit F.S.
- d) The ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities
- [40] Since separation, Ms. M. upgraded her qualifications and joined the workforce as an early childhood educator. She commenced a full-time career while caring for F.S. almost exclusively. She organizes her employment obligations around F.S.'s needs and schedule. For example, she took two hours off work to attend F.S.'s school performance when Mr. S. declined to attend.
- [41] On one occasion, when F.S. was in kindergarten, the principal at his school issued a cougar warning and recommended that the school children be dropped off by car. Ms. M. asked Mr. S. to drive F.S. to school but he refused because he wanted to sleep. Ms. M. did not have a driver's licence, so she walked F.S. to school and took a whistle in case they encountered a cougar.
- d) The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the children, including whether requiring cooperation would increase any risks to the safety, security or well-being of the children or other family members
- [42] An interim order made during a judicial case conference dated November 7, 2023 mandated that all major decisions affecting F.S. would be discussed by the parties with the goal of reaching agreement on these decisions. In the event of a disagreement, Ms. M. is entitled to make the decision and Mr. S. may apply for directions on any decision he thinks is contrary to F.S.' best interests pursuant to s. 49 of the FLA.
- [43] Mr. S. does not trust Ms. M. Specifically, he speculates that she may take F.S. to Jordan and never return to Canada. He bases this contention on a court filing Ms. M. initiated in Jordan during a 2023 visit in which she seeks a divorce from Mr. S. pursuant to Jordanian law. Mr. S. has not responded to the case in Jordan so he thinks his interests will be harmed if Ms. M. takes F.S. to Jordan.

- [44] In 2023, Mr. S. authorized Ms. M. to travel to Jordan with F.S. to visit her family. In 2024, Mr. S. refused a similar request and did not cooperate with Ms. M. in renewing F.S.'s passport. Consequently, Ms. M. did this trip on her own and F.S. did not travel to Jordan in 2024 to visit his maternal grandparents and extended family.
- [45] Ms. M. seeks an order that she be permitted to travel internationally with F.S. without the written consent of Mr. S. if she provides him with details of the proposed travel at least 14 days before the trip commences. Mr. S. seeks to prevent Ms. M. from travelling outside of Canada with F.S. unless he provides written consent or she obtains a court order.
- [46] Mr. S.'s refusal to authorize travel by Ms. M. and F.S. to Jordan in 2024 prevented F.S. from visiting his mother's family. This exercise of leverage by Mr. S. suggests that the parties will not be able to cooperate effectively on travel and other significant issues involving F.S.
- [47] In my view, F.S.'s needs are best served by preserving and continuing the parenting arrangements currently in place. Throughout F.S.'s life, Ms. M. has provided stable, secure, and consistent care. F.S. has lived primarily with Ms. M. and she orients her activities and prioritizes time to ensure that F.S.'s needs are met.
- [48] The details of the parenting orders are set out in the Summary of Orders at the end of this judgment.

What is Mr. S.'s Income for the Purpose of Calculating his Support Obligations?

Positions of the Parties

- [49] Ms. M. submits that Mr. S. is deliberately under-employed and should be imputed with an income of \$30,000. This is not based on Mr. S.' education background and work experience as a software engineer. Rather, it is based on Mr. S.'s monthly disability income of \$1,600 to \$1,800, his occasional contract work marking exam papers for the BC Institute of Technology, and his recent foray into driving an Uber.
- [50] Mr. S. denies that any income should be imputed to him. He asserts that he has unsuccessfully applied for hundreds of positions both related and unrelated to his educational and professional experience as a software engineer. He also tried to launch a business, but this venture failed. In short, he has done everything in his power to obtain employment and generate income but has been unable to do so.

Legal Principles

- [51] Section 19 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines] provides the court with broad discretion to determine that the income of a parent should be more than the total reported income.

- [52] The court may impute income to a spouse if they are intentionally underemployed or unemployed unless this circumstance is based on the reasonable health needs of that spouse: Guidelines, s. 19(1)(a).
- [53] The onus is on the person seeking to impute income to show an evidentiary basis: *Windle v. Windle*, 2010 BCSC 18 at para. 88.
- [54] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, considering the party's capacity to earn income in light of their age, education, health, work history, and work availability. Capacity to earn income includes the ability to work and to be trained to work: *Willms v. Willms*, 2020 BCCA 51.
- [55] In determining whether a party is intentionally unemployed or under-employed under s. 19(1)(a) of the Guidelines, the court must determine whether that party has taken reasonable steps to obtain employment commensurate with their age, health, education, skill, and work history: *Van Gool v. Van Gool*, (1998), 166 D.L.R. (4th) 528, 1998 CanLII 5650 (B.C.C.A.), supplementary judgment, 1999 BCCA 188; *Bourque v. Gerlach*, 2006 BCCA 157 at para. 63.
- [56] The following principles apply to determine if a parent is earning to their capacity:
- a) parents who are healthy and can work have a duty to seek employment;
 - b) reasonable income earning capacity will be based on consideration of a parent's age, education, experience, skills, health, and on-the-job opportunities that are reasonably available;
 - c) limited experience and skills do not justify a failure to pursue employment;
 - d) persistence in remunerative employment or unrealistic career aspirations will not be an excuse; and
 - e) self-induced reduction in income will not justify the avoidance of child support obligations.
- Fong v. Fong*, 2011 BCSC 42 at para. 82.

Factual Findings

- [57] Mr. S. is an experienced software engineer, formerly employed by Amazon for over five years in Jordan, Vancouver, and Washington. He was laid off in March 2023 and has not worked consistently since then.
- [58] Mr. S.'s income from 2019 to 2024 was approximately:
- 2019
- \$54,815
- 2020

\$216,000

2021

\$176,000

2022

\$225,581

2023

\$209,000

(includes withdrawals of \$43,171 from

Registered Retirement Savings Plan ("RRSP") and

\$24,000 from Tax-Free Savings Account ("TFSA")

2024

\$15,799

(includes income assistance of \$8,480 over eight months

[59] From 2023 to 2025, Mr. S. unsuccessfully applied for over 300 positions in the information and technology industry related to his training and experience as a software engineer.

[60] He received income assistance of approximately \$14,000 USD from September 2023 to March 2024. Biweekly during this period, he provided reports on his job-seeking efforts.

[61] After returning to BC in May 2024, Mr. S. began receiving social assistance of \$1,060 per month.

[62] In the wake of his unsuccessful attempts to restart his career in the information technology field, in 2023, Mr. S. attempted to generate income from a new venture by starting a coffee business. He began making payments for leased equipment in July 2023 and stopped making these payments in December 2023. In total, Mr. S. invested \$30,000 to \$40,000 in a trailer, a truck, and equipment for the coffee business. Despite his efforts, this business failed a few months before launching, and he lost the amount that he invested in this business.

[63] In addition to his exhaustive attempts to obtain a position in the information technology industry, Mr. S. applied for positions teaching coding and retail positions at Pizza Hut and Starbucks but also to no avail.

[64] Mr. S. is unable to perform physically demanding jobs or roles that involve exposure to chemicals because of his asthma, and his neck and back pain.

Discussion

- [65] I am satisfied that Mr. S. has tried to generate income but has been unable to do so. His efforts to obtain employment as a software engineer have been comprehensive, wide-ranging, and are ongoing. He has also looked for work in the service industry by applying to Pizza Hut and Starbucks, but these efforts were fruitless.
- [66] After extensively, yet unsuccessfully, applying for hundreds of jobs, Mr. S. rationally sought to earn income by working for himself in a coffee business that he hoped to launch. Unfortunately, this venture failed before it launched and Mr. S. lost approximately \$35,000 that he invested in this endeavour.
- [67] I am satisfied that Mr. S. used \$67,171 (\$43,171 he withdrew from his RRSP and \$24,000 from his TFSA) in 2023 to fund the failed coffee business. His income from other sources in 2023 is therefore \$141,829 (\$209,000 - \$67,171).
- [68] Mr. S. seems to be suffering from some mental health issues. He did not call any expert evidence to confirm this but he described symptoms that indicated that he experiences challenges with depression and anxiety. Ms. M. testified that Mr. S. suffers from these afflictions.
- [69] Mr. S. has not applied for disability benefits because he wants to continue looking for work, preferably as a software engineer. He fears that a disability designation will further hamper his job search. Ms. S. is still relatively young with many potential working years ahead of him. His desire to re-enter the labour force is laudable and understandable.
- [70] I am unable to determine why Mr. S.'s efforts to obtain employment have been unsuccessful but it is possible that this may be due, in part, to the problems he experiences with his mental health. Taking this into account, and in the face of the extensive efforts he has undertaken to find employment, I am not satisfied that any income should be imputed to him. I am not convinced, based on the limited evidence before me, that he should abandon his objective of resuming his career as a software engineer by applying for disability benefits.
- [71] I do not have expert evidence on the details of his medical condition. Absent that, I defer to Mr. S.'s judgment regarding his ability to obtain employment based on his extensive and ongoing efforts to find work in his chosen field.
- [72] I encourage Mr. S. to continue looking for employment and when he secures a source of income other than the social assistance he currently receives, he is, as will be described later in this judgment, required to immediately start paying child support to Ms. M. in accordance with the Guidelines as well as spousal support based on the Spousal Support Advisory Guidelines [SSAG].
- [73] Mr. S. is also required to provide Ms. M. with a copy of his annual filed income tax return and notice of reassessment by June 30th of each year.

Is Mr. S. Required to Pay Past or Future Child Support?

Relevant Factual Findings and Legal Principles

- [74] Each parent and guardian of a child has a duty to provide support for the child pursuant to the Guidelines; FLA, ss. 147(1) and 150(1).
- [75] Since March 7, 2022, F.S. has been primarily in Ms. M.'s care.
- [76] From March 2022 to October 2023, Mr. S. paid for rental accommodations for Ms. M. and F.S. in the amounts of \$2,000 to \$2,100 per month. He also paid \$1,000 per month towards Ms. M.'s credit card expenses. Ms. M. understood that these amounts constituted child support paid to her by Mr. S. for F.S.
- [77] From the date of separation on March 7, 2022 to December 31, 2023, Mr. S. paid \$56,000 in child support. Based on his income during those years, he should have paid \$32,590 in child support. Accordingly, he overpaid child support by \$23,410.
- [78] In October 2023, when Mr. S. stopped paying for rental accommodations and \$1,000 in credit card expenses for Ms. M. and F.S., he offered to pay \$500 in child support. However, he did not make this payment and, instead, paid \$100 per month as child support effective November 1, 2023, pursuant to the November 7, 2023 judicial case conference order. At this time, Mr. S. was unemployed.

Position of the Parties

- [79] Ms. M. seeks imputation of income to Mr. S. of \$30,000 as of January 1, 2024, and retroactive and prospective child support payable based on that amount. Mr. S. submits that the only steady source of income he receives is social assistance of \$1,060 per month and that he should pay future child support of \$100 per month.

Discussion

- [80] As previously described, I am declining to impute income to Mr. S. because I am satisfied that he has made extensive and ongoing efforts to obtain employment.
- [81] Mr. S. does not have the financial capacity to pay more than \$100 per month for child support until he obtains employment. He is required to continue paying this amount until he begins working at which time, he will immediately commence paying child support in accordance with the Guidelines.

Section 7 Expenses

Legal Principles

- [82] A s. 7 expense must fall within one of the categories of expenses listed under the section as follows:

- a) childcare expenses incurred because of the custodial parent's employment, illness, disability or education or training for employment;
- b) that portion of the medical and dental insurance premiums attributable to the child;
- c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- e) expenses for post-secondary education; and
- f) extraordinary expenses for extracurricular activities.

Clarke v. Clarke, 2014 BCSC 824 at para. 50.

[83] The above-referenced list of s. 7 expenses is exhaustive. If the claimed expense does not fit into any of those categories, it cannot be a special or extraordinary expense: Clarke at para. 51.

[84] The expense must be both "necessary", as defined in relation to the child's best interests and "reasonable" as measured against the combined financial means of the parents, as well as the spending patterns prior to separation: Clarke at para. 52.

[85] If the expense claimed falls under subsection (d) or (f)--educational programs or extracurricular activities--the party claiming the expense must provide that they are "extraordinary": Clarke at para. 53.

Positions of the Parties

[86] Ms. M. seeks equal division of s. 7 expenses. Ms. S did not specifically address the division of s. 7 expenses but I presume he seeks that they be divided pro rata.

Factual Findings

[87] Since separation, Ms. M. incurred s. 7 expenses of \$8,757.

[88] Mr. S. has contributed \$1,000 to s. 7 expenses in the form of two \$500 payments for F.S.'s daycare expenses. I reject the submission by Mr. S. that he also paid a further amount of \$1,000 because it is unclear whether this was a payment for child support, which he paid monthly, or a payment towards s. 7 expenses.

Discussion

- [89] Mr. S. does not currently have the financial ability to pay more than \$100 per month in child support and s. 7 expenses. Based on his limited income, I am not convinced that he was required to, or capable of, paying more of these expenses in the past. He is not required to pay past s. 7 expenses.
- [90] Once he begins earning income in excess of the social assistance benefits, he will immediately commence paying s. 7 expenses from that point forward on a pro rata basis based on his income compared to that of Ms. M.

Spousal Support

Findings of Fact

Ms. M.'s Work History

- [91] Ms. M. holds a bachelor's degree in special education and a diploma in speech therapy. In Saudi Arabia, from 2008 to January 2013, prior to marrying Mr. S., she worked as a speech therapist with people with special needs. At Mr. S.'s request, Ms. M. stopped working after they married.
- [92] Ms. M. did not work outside the home during the parties' marriage. She cooked, cleaned, and took care of the needs of F.S. and Mr. S.
- [93] Ms. M. earned employment income of \$10,989 in 2022 and \$25,279 in 2023.
- [94] After separation, Ms. M. updated her credentials by becoming a qualified early childhood educator. She has worked full-time in this capacity since 2024 and she earns approximately \$49,000 per year.

Mr. S.'s Work History

- [95] In late 2013 or early 2014, Mr. S. completed a four-year computer science degree at a university in Jordan.
- [96] Starting in 2018, Mr. S. has experienced several self-described mental health problems, including depression, anxiety, panic attacks, and insomnia. He also has asthma as well as back and neck pain. He continued working with these afflictions until Amazon laid him off in January 2023.
- [97] Mr. S. worked as a software engineer for Amazon beginning in 2017 in Jordan. Amazon paid to relocate him to Vancouver, BC in November 2019. He took a position with this company in Washington State in May 2022 and was laid off in January 2023. He was paid for two months following his layoff and received severance pay of approximately \$40,000 USD.
- [98] Mr. S. has not paid any spousal support to Ms. M.

Relevant Legal Principles

[99] When determining spousal support, the court must consider the following relevant objectives:

- a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses; and
- d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period.

FLA, s. 161.

[100] There are three forms of spousal support which a spouse may be entitled to: compensatory, non-compensatory, and contractual: *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 25-27. Contractual support is not at issue here.

[101] The purpose of compensatory support is to equitably share any economic disadvantages (or advantages) arising from the marriage, especially any of such arising from the division of childcare responsibilities: *Chutter v. Chutter*, 2008 BCCA 507 at para. 50. To achieve this equitable sharing, compensatory support may be awarded to ensure an equal standard of living between the spouses, particularly where the marriage was a long one:

[52] []

As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

Moge v. Moge, [1992] 3 S.C.R. 813 at 870, 1992 CanLII 25 (S.C.C.).

[102] A typical case where compensatory support is awarded is one where, after the birth of a child, one spouse gives up their remunerated work to provide their labour to the child and the family in the home, while the other spouse stays in the workforce and increases their earnings potential: *Moge* at 867-868.

[103] The purpose of non-compensatory support is to "narrow the gap between the needs and means of the spouses upon marital breakdown": *Chutter* at para. 54. The concept of "need" has been interpreted liberally and must be considered with reference to the standard of living during the relationship and the payor spouse's post-separation standard of living: *Chutter* at paras. 57-61.

- [104] Spousal support can be awarded on a prospective or retroactive basis. The considerations regarding the suitability of retroactive spousal support are similar to the factors applicable to retroactive awards of child support as set out in *D.B.S. v. S.R.G.*, 2006 SCC 37, although the weighing of those factors can differ depending on concerns over notice, delay and misconduct: *Kerr v. Baranow*, 2011 SCC 10 at paras. 207-208. The court must also consider any hardship occasioned by a retroactive award: *J.L.T. v. H.L.S.*, 2024 BCSC 1420 at para. 138.
- [105] The court may suspend the obligation to pay spousal support until the payor returns to employment: *Wurm v. Wurm*, 2001 BCSC 279, at para. 5; *French v. French*, 2021 BCCA 30, at para. 26; *L.G. v. R.G.*, 2012 BCSC 1365, at para. 300.

Positions of the Parties

- [106] Ms. M. submits that she is entitled to spousal support on both a compensatory and non-compensatory basis. She seeks retroactive and prospective spousal support for a total of five years.
- [107] Mr. S. denies that Ms. M. is entitled to spousal support because the parties agreed that Mr. S. would work and Ms. M. would care for their child and home.

Discussion

- [108] Ms. M. worked as a speech pathologist prior to marrying. At Mr. S.'s request, Ms. M. stopped working after they married. She took care of their home and after F.S. was born, she was his primary caregiver.
- [109] Ms. M. and Mr. S. were married and lived together for approximately nine years. I am satisfied that Ms. M. is entitled to spousal support because she gave up her career and took on household and child-rearing responsibilities which supported Mr. S.'s professional aspirations. Together, they moved to Canada where Mr. S. continued his career as a software engineer with Amazon. Ms. M. suffered an economic disadvantage that concurrently conferred an economic advantage on Mr. S. because he was able to pursue his career opportunities while Ms. M. took care of their home and child.
- [110] Ms. M. acted reasonably by quickly retraining to become an early childhood educator and finding employment in this field. Her efforts to become self-sufficient shortly after she and Mr. S separated are commendable and highlight her devotion and commitment to F.S.
- [111] I accept Ms. M.'s submission that she ought to receive spousal support for five years including retroactive spousal support. Despite extensive efforts, Mr. S. has not obtained employment. Ms. M.'s entitlement to spousal support began on the date of their separation but he has not had the capacity to pay spousal support since he lost his job with Amazon.

- [112] There was a period while Mr. S. continued working for Amazon when he was paying child support and rent payments (which was after separation but before he lost his job). Ms. M. is entitled to retroactive spousal support in respect of the period from March 2022 to March 2023, the date of separation to the date of Mr. S. being laid off. The amount of retroactive spousal support payable is \$60,325. This is calculated based on the mid-range of spousal support and the income of Ms. M. and Mr. S. in 2022 and 2023. Mr. S.'s 2023 income does not include the amounts he withdrew from his TFSA and RRSP in that year because these funds were primarily used to fund the failed coffee business.
- [113] Mr. S. has been unemployed since January 2023 despite his substantial efforts to obtain some form of employment. In my view, requiring him to pay over \$60,000 in retroactive spousal support will cause undue hardship because he is currently living on social assistance and when he commences employment, his foremost obligations will be to pay child support for F.S. and four years of spousal support to Ms. M. Considering this, in my view, it is reasonable to reduce the amount owing by Mr. S. for retroactive spousal support by 50%. Doing so will enable him to meet his obligations to F.S. and Ms. M. while re-establishing himself financially and professionally.
- [114] Mr. S. shall pay the nominal amount of \$50 per month towards the unpaid retroactive spousal support owing of \$30,163. However, when Mr. S. obtains employment, he will, as previously described, be required to pay child support in accordance with the Guidelines. Similarly, Mr. S. is ordered to commence paying spousal support for four further years in accordance with the SSAG at the mid-range and increase his payment towards repaying the balance of the retroactive spousal support owing such that this amount is paid off within four years from the date he obtains employment.

Division of Family Property and Debt

Findings of Fact

- [115] The parties agree that the value of family property at the date of separation is \$107,037.
- [116] Mr. S. lost approximately \$35,000 on a coffee business he tried to launch in June 2023 as described earlier.
- [117] After separation in March 2022 until March 2023, Mr. S. paid Ms. M.'s rent of \$2,100 per month as well as child support of \$1,000 per month. The total amount paid during this period was \$40,300.
- [118] Mr. S.'s income in 2022 was approximately \$225,581 and \$209,237 in 2023 which includes a RRSP withdrawal of \$43,171 and TFSA withdrawal of \$24,000. Accordingly, the child support he was required to pay for the 13 months from March 2022 to March 2023 was approximately \$23,339.

Relevant Legal Principles

[119] Section 84 of the FLA states:

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either [.]

[120] Family debt is debt that was incurred during the relationship or post-separation for the purpose of maintaining family property: FLA, s. 86.

[121] Married parties are presumptively entitled to an equal division of family property and are equally responsible for family debt regardless of their respective use or contribution: FLA, s. 81.

Position of the Parties

[122] Ms. M. seeks an equal division of \$107,037, the agreed-upon family property value as of the date of separation. She points out that Mr. S. has not applied for an unequal division of family property so she submits that he owes her \$53,518, representing one-half of the family property. Ms. M. also seeks an equalization of Mr. S.'s Canada Pension Plan pension credits from November 29, 2019 (when the parties moved to Canada) to March 7, 2022, the date of parties' separation.

[123] Mr. S. asserts that he used the funds in his RRSP and TFSA to pay child support after he was laid off in March 2023 and for the failed coffee business. He used \$22,800 of this total to pay support to Ms. M. from March to October 2023. He submits that this amount should be deducted from Ms. M.'s share of the family assets.

Discussion

[124] I accept that Mr. S. paid what he characterized as "child support" of \$22,800 after he lost his job with Amazon. During this period, he had no employment income available to pay his support obligations. I disagree that this entire amount should be deducted from Ms. M.'s share of the family assets. Instead, this amount shall be deducted from the agreed value of the assets as of the date of separation: $\$107,037 - \$22,800 = \$84,237$. This is because these funds that each party had an equal interest in were used for the benefit of F.S.

[125] As previously described, Mr. S. reasonably sought to earn income by extensively seeking employment as a software engineer, starting a coffee business, and unsuccessfully applying for minimum wage jobs in the service industry. His decision to use some of the family assets in a desperate attempt to generate some income by starting his own business was reasonable. As previously described, this venture failed but I am convinced that his efforts were intended to benefit his family. Accordingly, the loss of \$30,000 from this venture will be deducted from the family assets. The value of the assets to be divided is \$54,237 (\$84,237 - \$30,000).

[126] Ms. M.'s 50% share of the family assets is \$27,119 ($\$54,237 \div 2$). From this amount, the overpaid child support of \$23,410 will be deducted. Ms. M. is therefore entitled to a compensation payment of \$3,709 ($\$27,119 - \$23,410$) from Mr. S. as her share of the family assets.

Summary of Orders

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

Divorce

- a) Subject to s. 12 of the Divorce Act (Canada), the claimant, Ms. M., and the respondent, Mr. S., who were married at Amman, Jordan on August 14, 2013, are divorced from each other. The divorce to take effect on the 31st day after the date of this order.

Parenting Orders

- b) Both parties will be joint guardians of F.S.
- c) The parties will consult one another on significant decisions involving F.S. and try to reach agreement. If they disagree on a decision, Ms. M. will have final decision-making authority and Mr. S. may apply to the court for directions, pursuant to s. 49 of the FLA, if he believes a decision is contrary to F.S.'s best interests.
- d) Each guardian will have the right to obtain information concerning F.S. directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers.
- e) F.S.'s primary residence will be with Ms. M. and she will have primary decision-making authority in respect of him.
- f) Ms. M. and Mr. S. will have all the s. 41 parental responsibilities for F.S., pursuant to s. 40(3) (a) of the FLA.
- g) Mr. S. will have parenting time with F.S. on weekends from Friday at 2:45 p.m. until Saturday at 7 p.m. Mr. S. will pick up F.S. from school on Friday and drop him off at Ms. M.'s residence on Saturday. If Friday is a professional development day, Mr. S.'s parenting time will begin on Thursday at 2:45 p.m.

- h) The parties will share parenting time over the school holidays equally as follows:
 - i. Christmas Break: Ms. M. will have parenting time during the first half of the break and Mr. S. will have parenting time over the second half of the break. This schedule will not alternate because Ms. M. mandatorily gets the first week of the Winter Holidays as vacation.
 - ii. Spring Break: each party will get one week. Mr. S. will get the first week in even numbered years and Ms. M. will get the first week in odd numbered years. If the break is only one week, in even numbered years, Mr. S. will get the first four days and Ms. M. will get the last three days, and in odd numbered years, Ms. M. will get the first four days and Mr. S. will get the last three days.
 - iii. Summer Break: Mr. S. will have parenting for two weeks in July and two weeks in August. Mr. S. will provide his proposed weeks no later than May 31 for the following summer break.
 - i) Each party will be responsible for taking the child to and from any activities or appointments during that party's parenting time.
 - j) Ms. M. may travel with F.S. within Canada or internationally without the written consent of Mr. S. if she provides to Mr. S. at least 14 days before the proposed travel:
 - i. The dates and locations of the proposed travel;
 - ii. The addresses of where the child will be staying and a phone number where Mr. S. may contact F.S.; and
 - iii. any relevant travel or flight details.

Conduct Orders

- k) The parties will not question F.S. about the other parent or time spent with the other parent beyond simple conversational questions.
- l) The parties will not discuss with F.S. any inappropriate, adult, court, or legal matters.
- m) The parties will not blame, criticize, or disparage the other parent to F.S.
- n) The parties will only communicate with each other via email or text message about parenting time arrangements and child support, unless there is an emergency involving the Children.

Past or Future Child Support and/or s. 7 Expenses

- o) For the purposes of child support, Ms. M. earns \$49,000 per year and Mr. S. receives social assistance payments of \$12,720 per year based on \$1,060 per month.
- p) Mr. S. shall pay a total of \$100 per month for child support and s. 7 expenses until he begins earning income. When Mr. S. earns income in excess of the amount he receives as social assistance benefits, he will be required to immediately begin paying child support in accordance with the Guidelines.

- q) Mr. S. will provide Ms. M. with his filed annual income tax return and notice of assessment by June 30th of each year.

Spousal Support

- r) Mr. S. must commence paying \$50 per month in respect of the total retroactive spousal support he owes of \$30,163. Once he obtains employment, he must make monthly payments that will pay off the remainder of the balance owing for retroactive spousal support within four years from the start of his employment.
- s) When Mr. S. commences earning income in excess of the amounts he receives from social assistance benefits, he is ordered to commence paying spousal support for a duration of four years in accordance with the spousal support guidelines at the mid-range. The calculation of this amount must consider the amount of child support he will be paying pursuant to the Guidelines.

Division of Family Property

- t) Mr. S. must pay Ms. M. a compensation payment of \$3,709 in respect of the division of the family property. This is a debt Mr. S. owes to Ms. M.
- u) Mr. S. must commence reasonably repaying this debt when he begins earning income in excess of the benefits he receives as social assistance and/or disability benefits.
- v) Mr. S. is also required to equalize the unadjusted pension earnings under the Canada Pension Plan which accrued between November 29, 2019 and March 7, 2022.

[128] I will remain seized on this matter for one year from the date of this judgment to decide any issues with respect to the implementation of these orders.

Costs

[129] If the parties wish to make submissions on costs, they may be filed within 30 days of the date of this judgment. If the parties wish to make oral submissions on costs, they may make the necessary arrangements with Supreme Court Scheduling within this timeframe. If no submissions are received, the claimant will have her costs at Scale B.

"Basran J."

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