

CANADA / JUDGMENT

J.A.A. v. C.G.A.

2024 BCSC 1817

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2024 BCSC 1817 J.A.A. v. C.G.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.A.A. v. C.G.A.,

2024 BCSC 1817

Date: 20241003

Docket: E56382

Registry: Kamloops

Between:

J.A.A

Claimant

And

C.G.A.

Respondent

Before: The Honourable Mr. Justice B. Smith

Reasons for Judgment

Counsel for the Claimant:

A.A. Soll

Counsel for the Respondent:

J.L. Ball

Place and Date of Trial:

Kamloops, B.C.

August 22-25,

November 15-17, 2023 and

March 5, 2024

Place and Date of Judgment:

Kamloops, B.C.

October 3, 2024

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Introduction

- [1] I have anonymized these reasons for judgment in order to protect the privacy of a child.
- [2] This is a family law dispute. The parties are the biological parents of a child. The claimant is the child's mother. The respondent is the child's father. The primary issues for determination involve child support and spousal support, within the context of a four-year relationship with a stay-at-home mother and a self-employed father earning income through a wholly owned corporation.
- [3] In addition to the mother's support claims, she seeks an order that a charge be registered against a property owned by the father, and an order concerning ongoing financial disclosure. Finally, the mother seeks an order for special costs.
- [4] The father claims hardship.

Background

- [5] The mother was born July 7, 1992, and is now 32 years old. The father was born February 17, 1989, and is now 35 years old.
- [6] The parties met in the summer of 2012 in Fort St. John. They embarked on an intimate relationship. Sometime in September 2012, the mother learned she was pregnant. Around the same time, the father relocated to Vancouver to train as a pipe-fitter, and the mother remained in Fort St. John. They maintained a long-distance relationship.
- [7] In December 2012, the father returned to Fort St. John, and the parties started living together, with the father's mother.
- [8] The child was born on [date omitted].
- [9] In January 2014, the parties relocated from Fort St. John to Dawson Creek. There they lived in a house which the father purchased with financial assistance from the mother's family.
- [10] After the father was certified as a pipe-fitter, he went back to work for his previous employer.
- [11] In April 2014, the father decided to become self-employed as a pipe-fitting contractor, because he believed he could make more money that way. He incorporated a company, wholly owned by him, of which he is the sole director, officer and shareholder.

- [12] During the time the parties were in a relationship, the father's work frequently took him away from home for extended periods of time.
- [13] The parties' roles in their relationship were that the father worked to produce income and the mother did almost everything else. In addition to the mother's domestic activities, she also did some work for the company, invoicing clients and basic bookkeeping.
- [14] Over time, the parties' relationship deteriorated. At the end of September or beginning of October 2016, the mother left the house in Dawson Creek and relocated with the child to her parents' home in Kamloops. She subsequently regularly took the child back to Dawson Creek for parenting time with the father.
- [15] Continuing up to sometime in early 2018, the parties attempted unsuccessfully to reconcile.
- [16] The mother alleges conduct by the father during the relationship which is in the nature of family violence. The father denies responsibility for any family violence.
- [17] The parties have each since re-partnered. The father lives in Dawson Creek with his new partner, and they are the biological parents of two young children. The mother lives in Kamloops with her new partner, and they are the biological parents of a young child. The father's new partner appears to perform much the same domestic role as the mother did previously. The mother's new partner is employed in a well-paying job.
- [18] The mother now works part-time as a residential cleaner. The father remains self-employed as a pipe-fitting contractor.
- [19] Post-separation, the father paid only nominal child support. At a judicial case conference ("JCC") on January 24, 2019, he was ordered to pay child support of \$600 a month (the "JCC Order"). He has mostly complied with the JCC Order, missing payments some months, and paying less than required in others. In recent months he has been paying \$620 a month.
- [20] The father has never paid any spousal support.
- [21] Over the course of this litigation, there have been serious issues concerning the adequacy, accuracy and timeliness of the father's financial disclosure.

Credibility and Reliability

- [22] The assessment of credibility and reliability has been the topic of much judicial writing. The assessment process requires me to consider factors such as: a witness's ability and opportunity to observe events; the firmness of their memory; their ability to resist the influence of interest to modify their recollection; whether their evidence harmonizes with independent evidence that has been accepted; whether they change their testimony in direct and cross-examination; whether their testimony seems unreasonable, impossible or unlikely; whether they have a motive to lie; and their demeanour generally: *Bradshaw v. Stenner*, 2010 BCSC 1398; *aff'd*, 2012 BCCA 296.

- [23] Credibility determinations "may not be purely intellectual and may involve factors that are difficult to verbalize": R. v. M.(R.E.), 2008 SCC 51 at para. 49. They must not be based on emotional evaluations, stereotypes, guesswork, or impermissible reasoning, but grounded in reason and made as objectively as possible.
- [24] I must be cautious when considering demeanour, because I have no baseline for assessment, and know that courtrooms can be unfamiliar and intimidating environments, to which people react differently.
- [25] I may believe some, all, or none of a witness's evidence.
- [26] It is with these general principles in mind that I consider the evidence in this case.

The Mother

- [27] The mother was credible. When testifying, she was responsive to questions and sought clarification when necessary. She did not display any animus towards the father, overt or otherwise. She was firm under cross-examination, but not argumentative.
- [28] I find the mother's evidence reliable, despite some inconsistencies in her testimony which counsel identified in cross-examination. Her evidence was detailed, without seeming rehearsed, and was often corroborated by documentary evidence. She was careful in her answers.
- [29] The inconsistencies in her testimony do not raise any concerns about the mother's credibility or the reliability of her evidence. I accept the mother's evidence without reservation.

The Father

- [30] I have concerns about the father's credibility, particularly as it relates to his evidence about his income. He was often non-responsive to questions, for no apparent reason other than that he wished to avoid answering them. I was left with the impression that he had either failed to inform himself properly or was feigning ignorance or obfuscating to avoid answering questions. For example, when he was asked about travel expenses listed in the company's financial statements for 2014, the first year of its operation, he said he had no idea about the travel expenses, that it was "work related stuff" and "I don't really know". When he was asked about his company records for 2017, he said "I've never looked at these before". He frequently took refuge in answers like: "not exactly sure"; "maybe"; and "okay".
- [31] I also find the father was not credible in his evidence as it related to the issues of his intentions concerning the nature of the relationship, as well the separation date. Plainly stated, his evidence in this regard was implausible and struck me as tailored to accord with his claims that the mother was not a spouse, and that she did not start her proceeding within two years of the separation date.

- [32] I am also concerned about the father's apparent willingness to engage in deception when it serves his purposes. For example, he tried to explain a large difference in two Canada Revenue Agency ("CRA") assessments of his income in 2018 as attributable to telling his accountant to inflate his income so he could qualify for a mortgage.
- [33] In general, the father presented as cavalier about his administrative duties and responsibilities as the owner of the company. My overall impression was that he has a poor understanding of the financial aspects of successfully operating a small business, including such matters as record-keeping and oversight of those responsible for bookkeeping.
- [34] Because of my concerns about the father's credibility, I do not accept his evidence as reliable, unless it is independently corroborated by a credible source of reliable evidence.
- [35] Where the father's evidence differs from the evidence of the mother, I reject the father's evidence and accept the mother's evidence.

M.R.

- [36] M.R. is the father's new partner. I have concerns about M.R.'s credibility, because she presented as overly defensive of the father's position in this litigation. While this is perhaps not surprising, given that she is his new partner and has two children with him, I find her credibility was negatively affected by her thinly veiled attempts to lay blame for the father's failures concerning his administrative duties and responsibilities for the company at the feet of the mother, whom she clearly considers to have been incompetent in the bookkeeping she did for the company.
- [37] I have no concerns about the reliability of M.R.'s unchallenged evidence concerning the development of her relationship with the father, and her own bookkeeping for the company. Because of my concerns about her credibility, I do not accept her evidence about other matters as reliable, unless it is independently corroborated by a credible source of reliable evidence.

Disclosure

- [38] Disclosure is a major issue in this case. The issue is whether the father complied with his financial disclosure obligations. This question permeates the issues of child support and spousal support. In light of its importance, I propose to deal with it first, as my findings about disclosure are important to my approach to the other issues in the case.
- [39] The mother commenced this action on August 9, 2018. At the time of the JCC on January 30, 2019, the father had not provided financial disclosure. As a result, the JCC Order was based on incomplete information. Among other things, it provided a timeline for: exchange of lists of documents; demands for documents; and requests for further information, and responses. Between March 2019 and August 2021, the mother, and later her counsel, wrote several times to counsel for the father, requesting further disclosure be provided. The requests were lengthy and detailed. In January 2022, counsel for the mother filed an

application for disclosure, including for copies of the father's 2016, 2017 and 2020 tax returns, which the father still had not provided. The trial commenced on August 22, 2023. The next day, counsel for the mother wrote to counsel for the father referencing various outstanding disclosure, including the financial statements of the company for the year ending March 31, 2023.

- [40] At trial the father still claimed to be unclear about the state of disclosure. For example, when asked if there were any financial statements which he had failed to disclose, he said "I don't think so". Asked if there was any tax information he had not provided, he said "I don't believe so".
- [41] The mother says the father did not comply with his disclosure obligations, despite the JCC Order and her multiple detailed requests over several years. She says he failed to make disclosure in a timely manner, and that he has attempted to mislead the court about the nature of his relationship with the mother, his business, and his true income.
- [42] The father says he provided disclosure as and when it became available to him, that the mother's requests were excessive, and beyond what is required for the court to determine support issues. He says he has not hidden income information from the mother. He says the mother had access to his company records, and possession of the company cheque book until 2018.
- [43] The Family Law Act, S.B.C. 2011, c. 25 [FLA], the Federal Child Support Guidelines, SOR/97-175 [Guidelines] and the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] each impose disclosure obligations on litigants.
- [44] Under s. 5 of the FLA, a party to a family law dispute must provide to the other party full and true information for resolution purposes. Under s. 23 of the FLA, the court may draw an adverse inference against a spouse who fails to comply. Under s. 21 of the Guidelines, the parties are required to provide certain identified financial disclosure. Under s. 21(2), a respondent spouse in Canada whose income information is necessary to determine the amount of the order must provide disclosure within 30 days after service of the application, unless the court specifies otherwise. Under Rule 9 of the Rules, the parties have additional disclosure obligations, including that demands for disclosure must be responded to within 35 days of receipt.
- [45] The importance of disclosure has been recognized by the courts many times. For example, in *Colucci v. Colucci*, 2021 SCC 24 at paras. 48-54, the Supreme Court of Canada recognized that the child support system depends upon adequate, accurate and timely disclosure in family law disputes, noting at para. 48: "Simply stated, disclosure is the linchpin on which fair child support depends and the relevant legal tests must encourage the timely provision of necessary information".

- [46] I find the father failed to comply with his disclosure obligations. As a result, informational asymmetry between him and the mother lasted far longer than it should have, including, it seems, past the start of the trial.
- [47] The father's submissions are not persuasive. Quite apart from the obvious fact that the father knew what his income was, he controlled the information and material needed to calculate the appropriate amount of support. It is not correct, and no answer, for him to say he did not know the information or have the material until it was provided to him by others. If that were the case, a party required to disclose information in a family law dispute could claim ignorance and shelter behind delays attributable to others. Even if the father did not know, which I do not accept, he was in a position to inform himself.
- [48] While the father may not have directly hidden income information and material from the mother, by not complying with his disclosure obligations in a timely way, he indirectly achieved the same result. Many of the mother's requests for information and material appear to have gone unanswered. Even if he provided disclosure which was available to him when it became available to him, which I do not accept, he needed to do more than he did to ensure that he obtained and disclosed the information and material in a timely way.
- [49] By his actions, or inactions, he deprived the child of support, and left the mother on an unequal footing upon which to make informed decisions and attempt to resolve the support disputes outside of court.
- [50] While I have found that the father did not comply with his disclosure obligations, given the state of the evidence on the issue, I am not prepared to go so far as to say that he did so with the specific intention to mislead the court about the nature of his relationship with the mother, his business, and his true income.

Child Support

Prospective Child Support

- [51] The issue for determination is how much prospective child support the father must pay. This requires me to first determine his Guidelines income. The father claims hardship, so I must then determine whether requiring him to pay support based on his Guidelines income would constitute undue hardship, and if so, how much he must pay.
- [52] When interpreting the Guidelines, I must keep in mind the objectives set out in s.1: *Van Gool v. Van Gool*, 1998 CanLII 5650 (BCCA) [*Van Gool*], at para. 24.
- [53] I must also keep in mind the presumptive rule set out in s. 3: unless otherwise provided for in the Guidelines, the amount of a child support order for children under the age of majority is the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates, the income of the payor; and the amount, if any, determined under s. 7 for special or extraordinary expenses: *Van Gool*, at para. 25.

[54] A spouse's Guidelines income is determined in accordance with ss. 16-19. Courts have summarized the necessary steps for making the determination as follows:

- under s. 16, find the payor's Line 150/15000 income and make whatever adjustments to that amount are required by Schedule III;
- look at ss. 17-19 and determine whether any of the exceptions in those provisions applies, and, if so, what effect they should be given.

Brown v. Brown, 2014 BCCA 152 at para. 16; Vincent v. Vincent, 2012 BCCA 186 at para. 35.

[55] Under s. 17, if the court is of the opinion that s. 16 would not provide the fairest determination of a payor's income, the court may consider their income over previous years and determine an amount that is fair and reasonable in light of any pattern of income, fluctuation in income or receipt of a non-recurring amount during those years.

[56] Under s. 18, where a payor is a shareholder, director or officer of a corporation and the court is of the opinion that their annual income as determined under s. 16 does not fairly reflect all the money available to them for the payment of child support, the court may consider the situations described in s. 17 and determine their annual income to include pre-tax income of the corporation, or an amount commensurate with the services that they provide to the corporation.

[57] The purpose and application of s. 18 was discussed comprehensively by Willcock, J.A. in Quinton v. Kehler, 2020 BCCA 254 at paras. 75-85. At para. 85, Willcock, J.A. identified the following principles as applicable in that case:

- the Guidelines should be interpreted in light of their stated objectives, including the ability to calculate child support in an objective manner that ensures consistent treatment of spouses and children who are in similar circumstances;
- under a s. 18 approach, the corporate income method is likely to be the fairer method of determining income of an individual who wholly owns a corporation. This method allows a court to include all income available for child support which an intact family would utilize;
- where that approach is appropriate, pre-tax corporate earnings, not retained earnings or earnings after payment of taxes, are the starting point for an assessment of Guidelines income;
- where a company is wholly owned by the payor, the onus is on them to provide evidence that their pre-tax corporate earnings are not available to them.

[58] Under s. 19, the court may impute such amount of income to a payor as it considers appropriate in the circumstances, including: where they are intentionally under-employed or unemployed; have failed to provide income information when under a legal obligation to do so; and derive a significant portion of income from dividends.

- [59] The mother says s. 16 does not provide the fairest determination of the father's Guidelines income, because it does not fairly reflect all the money available to him for the payment of child support.
- [60] The mother says under s. 19, the court should impute income to the father of \$150,000 a year. She says I should find all the company's pre-tax income is available to the father for the purpose of child support. The mother says the father has failed to discharge his burden to establish the reasonableness of company expenses. She says he has failed to discharge his burden to establish the income is needed to sustain the company as a viable enterprise. The mother says the father is intentionally under-employed. She says dividend payments should be grossed up to account for the fact that they are income received from a source taxed at a lower rate or from non-taxable sources.
- [61] The father makes no submission concerning s. 16, but acknowledges ss. 17, 18 and 19 may each be used to determine his Guidelines income, and yield similar results.
- [62] Under s. 17, the father says income averaging is an appropriate methodology, because his income fluctuates from year to year, with non-recurring dividends, and his average Guidelines income since 2016 has been \$82,810.
- [63] Under s. 18, the father says the court could determine he has Guidelines income of \$82,800 a year value, based on \$72,000 a year as the value of his services, plus \$10,000 a year to account for personal expenses claimed through the company.
- [64] Under s. 19, the father says the court could impute Guidelines income to him of \$85,000 a year, based on the information in his tax returns and the financial records of the company.

Discussion and Decision

The father's Guidelines income is \$150,000

- [65] For the reasons that follow, I impute Guidelines income of \$150,000 to the father.
- [66] The father's 2022 tax return shows reported Line 15000 total income of \$139,221.49, comprising \$139,150 taxable corporate dividends, plus interest of \$71.49.
- [67] The onus is on the father to provide evidence that his pre-tax corporate earnings are not available to him. He has failed to discharge the onus.
- [68] I find s. 16 does not provide the fairest determination of the father's Guidelines income, because it does not fairly reflect all the money available to him for the payment of child support. Specifically, it does not account for money available to him from the company.
- [69] I reach the same conclusion about the application of ss. 17 and 18.
- [70] Concerning s. 17, I find that income averaging results in an artificially low amount.

- [71] Concerning s. 18, the company's 2022 tax return and its financial statements are not in evidence, and I am consequently unable to determine what amount, if any, to add to the father's income as being for his personal benefit but paid by the company. I find the father's services are properly valued at more than \$72,000 a year, because his CRA reassessment for 2013, during the time period when he worked as an employee after being certified as a pipe-fitter, indicates his income was \$106,313. He now has more than a decade of experience as a pipe-fitter, from which I infer that the current value of his services now is greater than when he was first certified.
- [72] I find the fairest way to determine the father's Guidelines income is by application of s. 19, which allows for the imputation of income. The test is reasonableness.
- [73] Section 19 provides for consideration of circumstances which I find must be considered in this case. These circumstances are: intentional under-employment or unemployment, failure to provide income information when under a legal obligation to do so, unreasonable deduction of expenses from income, and significant income from sources that are taxed at a lower rate than employment or business income, such as dividends.
- [74] Under s. 19, I impute income of \$150,000 to the father, based on Line 15000 income of \$139,221.49, plus \$10,000 to account for personal expenses claimed through the company, which, as noted above, counsel for the father submitted would be a reasonable amount.

Intentional under-employment or unemployment

- [75] I find the father is not earning to capacity. I make this finding based upon his income before he chose to become self-employed. The father testified that in 2012, his income as an apprentice pipe-fitter was "possibly" more than \$70,000. In 2013, his last year working as an employee, his CRA reassessment indicates he had employment income of \$106,313, over \$20,000 more than the \$85,000 income he now says would be appropriate to impute to him.
- [76] Persistence in unrealistic career aspirations is not an excuse for not earning to capacity. I find the father chooses to work as a self-employed pipe-fitting contractor, risking income instability, while incurring business expenses he otherwise would not incur. For example, in his testimony concerning his current work situation he described it as a "day to day thing", "nothing big like 2020", "nothing consistent"; and that he had no jobs lined up as at the time of trial. Asked if he had considered again becoming an employee, he said "yeah, I guess so". In cross-examination, he testified that: "I didn't become a contractor to become an employee". He said he does not know if work as an employee is available; believes he sent out resumes; but does not think he applied for work as an employee.
- [77] The evidence also establishes that for a period of time in 2021 and 2022, the father was unemployed. There is no evidence that he took any steps to secure employment or increase his education, skills, or training during this time.

[78] The father is a young man. There is no evidence that his health prevents him from earning to capacity; or increasing his education, skills or training.

Failure to provide information when under a legal obligation to do so

[79] As discussed above, I find the father failed to comply with his disclosure obligations.

Unreasonable deductions from income

[80] I find the father has in various years unreasonably deducted from his income certain expenses for legal fees, vehicle expenses, meals and entertainment and accounting fees. I make this finding based on the mother's evidence and M.R.'s evidence, which the father either confirmed, did not refute, or claimed to have no knowledge of.

Significant income from sources that are taxed at a lower rate than employment or business income

[81] I find the father has received significant income from sources that are taxed at a lower rate than employment or business income, namely dividends from the company: in 2018, taxable dividends of \$38,380; in 2019, taxable dividends of \$46,000; in 2020, taxable dividends of \$97,750; and in 2021, taxable dividends of \$37,950.

The father has not established undue hardship

[82] Under s. 10, the court may award an amount of child support that is different from the amount otherwise payable if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

[83] Under s. 10(2), the identified circumstances which may cause a spouse or child to suffer undue hardship include:

- the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living: s. 10(2)(a);
- the spouse has unusually high expenses in relation to exercising parenting time with a child: s. 10(2)(b);
- the spouse has a legal duty to support a child, other than a child of the marriage, who is under the age of majority, or the age of majority or older but unable, because of illness, disability or other cause, to obtain the necessities of life: s. 10(2)(d); and
- the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability: s. 10(2)(e).

[84] The father claims undue hardship, based on a combination of:

- his claimed responsibility for the majority of the family debt post-separation;

- his travel expenses to exercise parenting time; and
- his obligations to M.R. and their two children.

- [85] The threshold to prove undue hardship was discussed in *Van Gool*, at para. 51. It is a high threshold. The hardship must be "exceptional, excessive or disproportionate". An applicant bears the onus and must lead cogent evidence to establish the hardship is undue. The court will not presume undue hardship merely because the applicant has a legal responsibility for another child or the applicant's household standard of living is lower. The only exception where undue hardship may be presumed is if the applicant is at the lowest annual income level under the Guidelines.
- [86] I find that the father's obligation to pay child support based on imputed income of \$150,000 should not be reduced, because the father has not met the burden of establishing undue hardship. The family debt was dealt with in a mediation agreement between the parties which settled issues of division of property, was assumed by the father when he was represented by counsel, and knew that support issues still had to be determined. It is undisputed that the father has significant expenses in relation to exercising parenting time with the child, but there is a lack of evidence upon which to base a finding that the expenses are unusually high. Similarly, while the father's obligations to M.R. and their two children is undisputed, he has failed to establish they are unusually high.
- [87] The applicable table amount for child support in these circumstances is \$1,356 a month. Accordingly, having regard to the presumptive rule set out in s. 3, commencing January 1, 2022, and continuing until the child reaches the age of majority, the father will pay child support of \$1,356 a month to the mother.
- [88] The father's child support obligation for 2022 is \$16,272, plus interest. It is undisputed that he has already paid child support of \$7,317.01. The father's remaining child support obligation for 2022 is \$8,954.99, not inclusive of interest, less credit for any amount he has paid in addition to \$7,317.01, and is payable immediately.
- [89] The father's child support obligation for 2023 is \$16,272, plus interest. It is undisputed that as at the beginning of August 2023, he has already paid child support of \$4,300. The father's remaining child support obligation for 2023 is \$11,972, not including interest, less credit for any amount he has paid in addition to \$4,300, and is payable immediately.
- [90] The father's child support obligation for 2024 is \$1,356 a month, plus interest, less credit for any amount he has already paid, and for the months of January through October, is payable immediately.
- [91] The father's child support obligation beyond 2024 is \$16,272 a year, until the child reaches the age of majority.

Retroactive Child Support

[92] The issue for determination is whether I should exercise my discretion to order retroactive child support. This requires me to consider four primary factors: D.B.S. v. S.R.G., 2006 SCC 37 [D.B.S.] at paras. 100-117; Michel v. Graydon, 2020 SCC 24 at para. 10. The four factors are:

- reasonable excuse for why support was not sought earlier: D.B.S. at paras. 100-104;
- conduct of the payor parent: D.B.S. at paras. 105-109;
- circumstances of the child: D.B.S. at paras. 110-113; and
- hardship occasioned by a retroactive award: D.B.S. at paras. 114-117.

[93] In this case, I must consider whether the mother has a reasonable excuse for delay in seeking child support from the father, as well as the father's conduct, the circumstances of the child, and whether a retroactive award would cause the father any hardship.

[94] In considering the reasonable excuse factor, I must also keep in mind two important concerns, identified in D.B.S. at paras. 102-103. The first concern is the payor parent's interest in certainty. The second is that recipient parents ought not to be encouraged to delay in seeking the appropriate amount of support for their children.

[95] Concerning the father's hardship claim, I must determine whether requiring him to pay arrears would constitute significant hardship and, if so, how much he must pay.

Discussion and Decision

Reasonable excuse for why support was not sought earlier

[96] I find that the mother has a reasonable excuse for why she did not seek support earlier.

[97] The parties each commenced proceedings in October 2016, within two weeks of the mother relocating with the child to Kamloops.

[98] On October 7, 2016, the father filed an application in Provincial Court for an order on an ex parte basis. The presiding judge ordered that the application be heard on October 18, 2016, to allow time for service of the father's documents on the mother. Meanwhile, on October 11, 2016, prior to being served with the father's documents, the mother filed a Notice of Family Claim in Supreme Court (the "First Action"). On October 17, 2016, the mother's documents in the First Action documents were served on the father. The next day, on October 18, 2016, the father's documents were served on the mother.

[99] Sometime later in October, or in November 2016, the father asked the mother not to take any further steps in the First Action. The father told the mother he had met with his lawyer, and had been advised by them that he could be required to pay child support of \$1,500 a month. He told her he could not make child support payments at that time, but would pay her \$1,500 a month once he was back at work. He asked her to withdraw her claim. They discussed the possibility of reconciliation. She agreed to withdraw her claim on the

understanding that he too would not take any further steps in his application.

- [100] On October 26, 2016, the father filed a Response to Family Claim in the First Action and, the next day, on October 27, 2016, he filed a Counterclaim in the First Action (the "Counterclaim").
- [101] The mother subsequently discontinued the First Action. The ensuing months involved failed attempts at reconciliation. On August 9, 2018, the mother commenced this action.
- [102] The JCC Order was in January 2019. The father says more than five years have passed since the JCC Order, in which the mother has taken no steps to seek an increase in child support. He says the mother has not provided any reason for this, other than that she believed she did not have adequate disclosure. The father submits this is not a reasonable excuse, as the mother could have brought an application for disclosure at any time.
- [103] The father's submission is not persuasive. Had he complied with his disclosure obligations, based on what is now known about his income, he would have been required to pay more than \$600 a month for child support. His submission that the mother could have brought an application for disclosure at any time, while correct, ignores the fact that in January 2022 she did file an application for disclosure, although it appears not to have proceeded to a hearing.

Father's Conduct

- [104] As discussed above, I find the father failed to comply with his disclosure obligations.

Circumstances of the Child

- [105] I find the circumstances of the child were negatively affected by the father's failure to pay an appropriate amount of child support.
- [106] The father submits there is no evidence the child's current circumstances are different to what they were during his relationship with the mother.
- [107] The father's submission is not persuasive. The child's current circumstances may not be different to what they were during his relationship with the mother, but that is attributable to the fact that the mother has now re-partnered. Before she re-partnered, her financial situation was tenuous, because of the father's failure to pay an appropriate amount of child support. This affected the financial resources available to the mother for things such as recreational activities for the child. For example, the mother testified about how she had to rely on others to provide used sports equipment for the child, such as ballet shoes.
- [108] Balancing the D.B.S. factors, I find retroactive child support is appropriate, and will serve achieving the objectives of the Guidelines, because the father's income available to pay child support from 2016 to 2021 shows the \$600 a month mandated by the JCC Order is significantly less than he should have been paying.

How much must the father pay?

[109] Since October 2016, the father has paid child support of \$39,494.26 as follows:

Year

Amount

2016

\$325.00

2017

\$3,775.00

2018

\$4,470.00

2019

\$7,200.00

2020

\$7,200.0

2021

\$4,907.25

2022

\$7,317.01

2023

\$4,300.00

Total:

\$39,494.26

[110] The mother says the father should pay retroactive child support of \$56,907.74, plus interest.

[111] The father says his obligation to pay retroactive child support should be fixed at \$14,916, inclusive of arrears. He proposes to make payment over ten years, in monthly installments of \$124.

[112] In order to determine the amount of retroactive child support owing, I must first determine the father's income for the purpose of child support in each of the years from 2016 to 2021. I must then determine the date of retroactivity, the retroactive amount owing, and whether the arrears should be cancelled or reduced because of significant hardship.

[113] I do not have the benefit of any professional report concerning the father's Guidelines income, and make my findings of fact based on: the father's tax returns; CRA assessments and reassessments; the company's tax returns; the company's financial statements; reporting letters from an accounting firm; and the testimony of the parties and M.R. I find the various documents raise more questions than they provide answers. The testimony of the parties about the finances of the company was often vague and sometimes confusing. In the case of the mother, I attribute this to the fact that for much of the history of this litigation she has been disadvantaged by informational asymmetry. In the case of the father, I attribute this to one or both of two reasons: first, failure to inform himself properly; second, feigned ignorance or obfuscation. Neither reason inures to his benefit. The evidence of M.R. did not make the evidence any clearer.

September 29, 2016 - the date of retroactivity

[114] I find the date of retroactivity is September 29, 2016.

[115] The mother gave the father formal notice on August 9, 2018, when she filed her Notice of Family Claim. The separation date was on September 29, 2016, which is significantly less than the three years of retroactivity beyond which courts usually find it inappropriate to make a retroactive support order: D.B.S., at para. 123.

Income Imputation - 2016 to 2021

2016 - imputed income \$60,000

[116] For 2016, the mother says the court should impute income to the father of \$60,000. The father makes no submission specifically about 2016.

[117] The father testified that 2016 was a "very slow" year. CRA assessed the father's Line 150 total income as \$24,248. For the financial year ending March 31, 2017, the company reported income of \$105,170.

[118] For 2016, I impute income to the father of \$60,000.

2017 - imputed income \$100,000

[119] For 2017, the mother says the court should impute income to the father of \$100,000. The father makes no submission specifically about 2017.

[120] CRA assessed the father's Line 150 total income as \$68,000. The father testified that for seven or eight months he rented the house in Dawson Creek to somebody, who paid him \$600 or \$700 a month in cash. He says he paid this to the mother for child support, which the mother denies. For the reasons already stated, I prefer the evidence of the mother to that of the father. The father also received \$30,000 as part of a settlement agreement. For the financial year ending March 31, 2018, the company reported income of \$137,440.

[121] For 2017, I impute income to the father of \$100,000.

2018 - imputed income \$100,000

[122] For 2018, the mother says the court should impute income to the father of \$100,000. The father makes no submission specifically about 2018.

[123] CRA initially assessed the father's Line 150 total income as \$26,689.69, comprising taxable corporate dividends of \$26,680, plus interest of \$9.69. An accounting firm completed the tax return. According to its reporting letter to the father, his 2018 total income was \$51,622.14, comprising taxable corporate dividends of \$38,380 plus interest of \$9.69, plus net rental income of \$13,332.45 (\$25,200 gross rental income minus rental expenses of \$11,876.55) for an unidentified rental property, which, based on the father's and mother's testimony, I find was the house in Dawson Creek. CRA subsequently reassessed the father's Line 150 total income as \$51,621. For the financial year ending March 31, 2019, the company reported income of \$98,199, inclusive of the dividend paid to the father.

[124] The father testified in response to a question about whether he knew why there was a difference between his initial assessment (which identified his total income as \$26,689.69) and the reassessment (which identified his total income as \$51,621) that he was "pretty sure" that is when he asked his accountant to inflate his income so I could get approval for a mortgage on a property in Kamloops which he wanted to buy in order to be closer to the child.

[125] For 2018, I impute income to the father of \$100,000.

2019 - imputed income \$125,000

[126] For 2019, the mother says the court should impute income to the father of \$150,000. The father makes no submission specifically about 2019.

[127] CRA assessed the father's Line 15000 total income as \$31,291.21, comprising taxable corporate dividends of \$46,000, plus interest of \$55.84, minus rental loss of \$14,764.63 for the house in Dawson Creek (no rental income was reported). The rental expenses claimed comprised interest (\$8,810.11), property taxes (\$2,930.30) and utilities (\$3,024.22). An accounting firm completed the tax return. For the financial year ending March 31, 2020, the company reported income of \$144,618, inclusive of the dividend paid to the father.

[128] The father testified in response to a question about the difference between his income in 2019 and 2020, that he used money from the company to pay a significant amount on legal fees related to this litigation.

[129] For 2019, I impute income to the father of \$125,000.

2020 - imputed income \$125,000

[130] For 2020, the mother says the court should impute income to the father of \$150,000. The father makes no submission specifically about 2020.

[131] CRA assessed the father's Line 15000 total income as \$99,183. The father's reported Line 15000 total income was \$26,789.84, comprising taxable corporate dividends of \$74,750, plus interest of 53.47, minus rental loss of \$48,013.63 for the house in Dawson Creek (no rental income was reported). The rental expenses claimed comprised interest (\$8,798.31), maintenance and repairs (\$36,747.87), and utilities (\$2,467.45). An accounting firm completed the tax return. According to its reporting letter to the father, his total income in 2020 was \$51,169.84, comprising taxable corporate dividends of \$97,750 (\$23,000 more than initially reported), plus interest of \$1,433.47 (\$1,380 more than initially reported), minus rental loss of \$48,013.63 for the house in Dawson Creek (the same as originally reported). For the financial year ending March 31, 2021, the company reported revenue of \$222,577, inclusive of the dividend paid to the father.

[132] The father testified that he was laid off in November 2020, because of regulations related to the pandemic.

[133] For 2020, I impute income to the father of \$125,000.

2021 - imputed income \$125,000

[134] For 2021, the mother says the court should impute income to the father of \$150,000. The father makes no submission specifically about 2021.

[135] CRA assessed the father's Line 15000 total income as \$55,019.04, comprising taxable corporate dividends of \$37,950, plus \$17,000 of pandemic-related benefits, plus interest of \$69.04. An accounting firm completed the tax return. For the financial year ending March 31, 2022, the company reported revenue of \$119,225.

[136] As I understand the father's testimony, he only worked for eight months in 2021.

[137] For 2021, I impute income to the father of \$125,000.

Monthly amount payable

[138] I find the monthly amount payable by the father to the mother from 2016 to 2021 as follows:

Year

Imputed Income

Monthly Amount Payable

2016

\$60,000

\$556

2017

\$100,000

\$946

2018

\$100,000

\$946

2019

\$125,000

\$1,154

2020

\$125,000

\$1,154

2021

\$125,000

\$1,154

[139] For 2016, the father will pay retroactive child support of \$1,343, comprising \$1,668 owing (\$556 x 3 months, for October, November and December 2016), less \$325 already paid; plus interest.

[140] For 2017, the father will pay retroactive child support of \$7,577, comprising \$11,352 owing (\$946 x 12 months), less \$3,775 already paid.

[141] For 2018, the father will pay retroactive child support of \$6,882, comprising \$11,352 owing (\$946 X 12 months), less \$4,470 already paid.

[142] For 2019, the father will pay retroactive child support of \$6,648, comprising \$13,848 (\$1,154 X 12 months) owing, less \$7,200 he has already paid.

[143] For 2020, the father will pay retroactive child support of \$6,648, comprising \$13,848 (\$1,154 X 12 months) owing, less \$7,200 he has already paid.

[144] For 2021, the father will pay retroactive child support of \$8,940.75, comprising \$13,848 (\$1,154 X 12 months) owing, less \$4907.25 he has already paid.

[145] In total, the father will pay retroactive child support of \$38,038.75, plus interest. He will receive credit for any additional payments not included above.

Hardship

[146] It is undisputed that as of February 22, 2024, the father's arrears under the JCC Order were \$3,484.26, including interest and default fees.

- [147] The father has support obligations to M.R. and his two children with her. The father also has significant tax liability. As of May 26, 2023, he owed CRA \$21,863.83.
- [148] The court can cancel or reduce arrears of child support on the basis of significant hardship. The concept of significant hardship in this context is not quite the same as the concept of undue hardship under s. 10. Significant hardship may constitute a material change in circumstances that would warrant a cancellation or reduction of arrears. The focus of the inquiry in assessing significant hardship in this context is the payor's present circumstances and how payment of the arrears would impact upon him and his other family obligations: *Shaw v. Kirk*, 2019 BCSC 23, at paras. 25-26; and the cases cited there.
- [149] I find the father's arrears should not be cancelled or reduced on account of significant hardship. Specifically, I find that the father has not established a material change in circumstances since the JCC Order, justifying either cancellation or reduction of the arrears. The father chose to embark on a new relationship and incur the obligations he has to M.R. and their two children. He chose to incur significant tax liability.
- [150] Commencing October 1, 2024, in addition to the \$1,356 the father will pay the mother for prospective child support, the father will pay the mother \$644 a month for retroactive support for the child, for a total payment of \$2,000 a month. The \$644 will be credited to the principal amount owing before being credited towards interest owing.

Special or Extraordinary Expenses

- [151] The issue for determination is whether, and in what proportion, the father must pay certain special or extraordinary expenses for the child.
- [152] The mother says the father has failed to contribute and must do so. The father says the mother failed to provide him with prior notice of the expenses or receipts to substantiate them.

Discussion and Decision

- [153] Under s. 7, the court may order the payment of an amount for all or a portion of defined special or extraordinary expenses, considering the necessity and reasonableness of the expenses claimed in relation to the means of the payor parent, the other parent, and the child; and the family's spending pattern prior to separation.
- [154] The mother seeks an order that the father retroactively pay the child's expenses for preschool, counselling and gymnastics. From October 2016 to November 2017, the preschool expenses were \$1,860. From September 29, 2016 to August 2023, the counselling expenses were \$1,761.38, and the gymnastics expenses were \$3,199.67. The father opposes the order sought on either or both of two bases: the mother did not provide prior notice of the expenses; the mother has not provided proper supporting documentation.

[155] I dismiss the mother's claims for these expenses for the child, because I find the evidentiary basis was poorly developed, and I am consequently unable to make necessary findings of fact. However, beginning October 1, 2024, the parties will pay their proportionate share of s. 7 expenses. The father will pay 88%, and the mother will pay 12%; based on income of \$150,000 for the father and \$20,000 for the mother.

Spousal Support

[156] The issues for determination are:

- whether the mother is a spouse within the meaning of the FLA;
- if yes, whether she started her proceeding within two years of the separation date;
- if yes, whether she is entitled to support, on a compensatory or non-compensatory basis, or both; and
- if yes, the appropriate amount, and whether payments should be periodic, or in a lump sum award.

[157] The mother claims \$74,207 lump sum spousal support in lieu of periodic support.

[158] The father says the mother is not entitled to any spousal support. He says she is not a spouse within the meaning of s. 3 of the FLA, because they were never in a marriage-like relationship. The father says that even if they were in a marriage-like relationship, the mother started her proceeding for spousal support more than two years after they separated. For these reasons, the father says the mother's claim must fail. In the alternative, the father says that even if the mother is entitled to spousal support, given the length of the parties' relationship, the time which has elapsed since they separated, and the fact that the mother has now re-partnered, only a nominal award would be appropriate.

[159] Under s. 3 of the FLA, a spouse includes a person who has lived with another person in a marriage-like relationship; and has done so for a continuous period of at least two years, or has a child with the other person; subject to exceptions. The party alleging the existence of a marriage-like relationship has the burden of proof on a balance of probabilities: *Ibrahim v. Lee*, 2023 BCSC 28, at para. 21.

[160] Under s. 198(2) of the FLA, a spouse may start a proceeding for a spousal support order, in the case of spouses who were living in a marriage-like relationship, no later than two years after the date the spouses separated.

[161] Under s. 161 of the FLA, in determining a spouse's entitlement to spousal support, the court must consider the following objectives of spousal support:

- to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship: s. 161(a);

- to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child: s. 161(b);
- to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses: s. 161(c);
- as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time: s. 161(d).

[162] Under s. 160 of the FLA, if after considering the objectives of spousal support, the court determines that a spouse is entitled to spousal support, the other spouse has a duty to provide support for the spouse in accordance with s. 162 of the FLA.

[163] Under s. 162 of the FLA, the amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the following:

- the length of time the spouses lived together: s. 162(a);
- the functions performed by each spouse during the period they lived together: s. 162(b); and
- an agreement between the spouses, or an order, relating to the support of either spouse: s. 162(c).

[164] The cases distinguish support ordered on "compensatory" or "non-compensatory" grounds: *Chutter v. Chutter*, 2008 BCCA 507 [Chutter] at paras. 47-61.

[165] Compensatory support is ordered to compensate a spouse for economic disadvantage incurred in consequence of the relationship, or economic advantage conferred on the other spouse. Compensatory support fulfills the purposes identified in s. 161(b) and (c): *Rong v. Tan*, 2023 BCSC 1664 [Rong] at para. 110.

[166] Non-compensatory support is ordered on the basis of the respective needs and means of the spouses: *Rong*, at para. 111.

[167] The court must first determine whether the claimant is entitled to an award on a compensatory or non-compensatory basis. If yes, the court must then consider the amount and duration of the award, on the assumption of an award paid as a series of monthly payments. This requires the court to consider the Spousal Support Advisory Guidelines [SSAG], which includes formula ranges based on the income of the spouses calculated in accordance with the Guidelines, subject to certain adjustments. While the SSAG does not have the force of legislation, in assessing a claim for support they are a useful tool: *Redpath v. Redpath*, 2006 BCCA at para. 42; *Chutter* at para. 101; *H.C.F. v. D.T.F.*, 2017 BCSC 1226, at para. 220.

[168] The premise of the SSAG is that entitlement has already been established, but the considerations pertaining to entitlement also bear on exercises of discretion: Rong, at para. 114. The basis of entitlement is important, not only as a threshold issue, but also to determine location within the formula ranges or to justify departure from the ranges as an exception: SSAG, s. 3.2.2. An analysis of the basis of entitlement is a necessary underpinning to the determination of the amount and duration of support: SSAG, s. 4.2.

[169] Under s. 170(c) of the FLA, the court can order lump sum payment of spousal support. Courts have identified the following principles and considerations concerning lump sum awards:

- the same considerations apply to orders for lump sum child support and lump sum spousal support;
- lump sum spousal support awards are exceptional, and should only be made when there is some exceptional need or specific circumstances render it appropriate;
- the existence of animosity between the parties may favour a lump sum spousal support award to reduce future sources of conflict;
- the only asset of the payor spouse is their interest in the family home;
- the payor spouse was unable to pay any child support;
- it was neither practical nor feasible for the payor parent to make periodic payments, considering their earning capacity;
- the payor parent did not comply with a previous support order and had not demonstrated prudent financial management;
- the payor parent's plans were to use available money to pay off debts instead of child support; and
- the payor parent had limited means to earn income in the foreseeable future and one financial asset.

See: Vinciguerra v. Bertram, 1998 CanLII 6242 (BCSC) at para. 51; citing Myatt v. Myatt (1993), 45 R.F.L. (3d) 45 at 50-52, and the cases cited there.

[170] In claims for retroactive spousal support, the court must take the same factors into account as in claims for retroactive child support, but they are weighed differently, in that concerns about the applicant's notice, delay and misconduct carry more weight: Ducharme v. Rempel, 2016 BCCA 198, at paras. 16-17; citing Kerr v. Baranow, 2011 SCC 10, at para. 207.

Discussion and Decision

[171] I find the mother is a spouse within the meaning of s. 3 of the FLA and that she commenced her proceeding for spousal support within two years of the separation date.

The parties were in a marriage-like relationship

[172] The FLA does not define what constitutes a marriage-like relationship. The case law establishes that in determining whether a marriage-like relationship exists, the approach should be a holistic view of the evidence, taking all relevant matters into account and weighing the factors. A checklist approach is not appropriate, though objective evidence of the parties' lifestyle and interactions will provide direct guidance on the question of whether a relationship was marriage-like. An important factor is the parties' intentions and whether the couple saw their relationship as one of indeterminate, lengthy duration: *Weber v. Leclerc*, 2015 BCCA 492, leave to appeal ref'd 2016 CanLII 21781 (SCC); *McDowell v. Andrews*, 2018 BCSC 2216.

[173] I find that the parties were in a marriage-like relationship.

[174] Viewed objectively, the evidence establishes that the parties were in a marriage-like relationship starting in January 2013, after the father returned to Fort St. John from training in Vancouver, until September 2016, when the mother left the house in Dawson Creek. Each perceived and intended their relationship to be marriage-like. I believe the mother's testimony that the father expressed commitment to the mother when she told him she was pregnant, and he did not contradict her evidence in that regard. They made plans for a future together. They lived together as a couple, not as roommates. They shared the same bed and were sexually intimate.

[175] Although the mother sometimes stayed with her parents in Kamloops for extended periods of time after the child was born, while the father was away at work, she did so because she was struggling as a young first-time mother and needed their help. On other occasions when she travelled to Kamloops, it was so that members of her family visiting from overseas could meet the child.

[176] They carried on activities in public and portrayed themselves to family and friends as a couple. They celebrated special occasions and family events together, such as Christmas, New Year's, and the child's birthday.

[177] They travelled together. They shared financial resources.

The parties' separation date was September 29, 2016

[178] I find that the parties' separation date was on or about September 29, 2016, or within a few days after that date.

[179] The parties disagree about their separation date. The mother says it was September 29, 2016. The father says it was "in or just before July 2016" and that the mother "was in a new relationship with another man by August of 2016". If I accept the father's position, the mother's claim was not brought in time and, by operation of s. 198(2) of the FLA, her claim for spousal support must fail.

- [180] I accept the mother's evidence about the events of September 29, 2016. There is no sufficient evidentiary basis for finding that the separation date was before September 29, 2016; or any basis for finding that the mother was in a different relationship by August 2016.
- [181] The mother filed her Notice of Family Claim in this action, in which she claimed spousal support, on August 18, 2018, which is not later than two years after the separation date. Her claim for spousal support was brought in time.

The mother is entitled to spousal support

- [182] I find the mother has established entitlement to spousal support, on a compensatory basis and a non-compensatory basis, because during the relationship the mother was disadvantaged educationally, economically and financially by reason of their respective roles, while the father was thereby advantaged. The disadvantages to the mother, and the advantages to the father, continued post-separation.
- [183] The mother experienced educational, economic and financial disadvantages arising from the relationship. She put educational and work plans on hold while she was primarily responsible for looking after the child. As a result, the mother lost educational and work opportunities. The educational, economic and financial disadvantages continued post-separation, as the father no longer provided her with the necessary economic support and security.
- [184] Conversely, the father experienced career, economic and financial advantages arising from the relationship. He pursued his career objectives, including his wish to become self-employed, while the mother was primarily responsible for looking after the child. He started and developed the company, and provided services as a pipe-fitting contractor, taking on work out of town, away from home, for extended periods of time. The financial advantages to the father increased post-separation, as he no longer provided the mother with economic support and security as he had done previously.
- [185] Before the relationship, the mother supported herself financially, had her own accommodation, and no restrictions on her plans to work to finance her further education. After the relationship, she relied heavily on the support of her parents, financially, and for accommodation. Her obligations as primary caregiver for the child necessarily restricted her work plans, and she took on low paying part-time work as a residential cleaner. Her plans for further education remained on hold. She has since re-partnered and has another child. Since she re-partnered, her prospects for achieving self-sufficiency have improved.
- [186] The evidence about how the father supported himself financially, and whether he had his own accommodation before the relationship, is not well developed, although it is clear he worked as an employee and lived with his mother when not out of town for work. He was unrestricted in pursuing his goal of achieving certification as a pipe-fitter, and moved to Vancouver for several months for the necessary training. During the relationship, he had unrestricted ability to pursue his career objectives in the manner of his choosing. After the

relationship, he was economically self-sufficient. He operated the company. He received rental income from renting out the house in Dawson Creek for a period of time. The company's tax returns and financial statements suggest it is in a stronger financial position now than in the years after its creation. This is also reflected in the dividends the father has received from the company in recent years. He has re-partnered and has two other children.

- [187] Before the parties' relationship, they both worked and were of limited means.
- [188] During the relationship, the father earned income, the mother did not, and he gave some of his earnings to her for expenses. He bought the former family residence and paid \$289,000. He was on title, she was not. There is no evidence about whether he owned other real estate, she did not. He had a student loan. He bought several vehicles through the company, and the company paid all the associated expenses. She had a car, and a car loan. They ate out at restaurants.
- [189] Post-separation, he remained living in the former family residence, she moved in with her parents. They both re-partnered. He had two more children, she had one. He is still self-employed and has significant income, she is now self-employed and has low income.
- [190] Post-separation, the mother experienced significant financial need. When the parties separated at the end of September 2016, the mother had approximately \$700 in her bank account, a credit card with a \$1,000 limit and a balance of \$500 - \$700. She had a car loan of approximately \$500 a month, plus associated expenses for insurance and gas; as well as other expenses, such as for a cell phone.
- [191] She relied heavily on her parents, who provided accommodation for her and the child, and paid for the majority of her groceries.
- [192] She maxed out her credit card, and then got two additional credit cards, which she maxed out too, to pay her legal bills in connection with this litigation.
- [193] She began looking for a job and, in November 2016, got a position in Kamloops, working on a casual basis, with sporadic shifts.
- [194] When she told the father about her job, he initially congratulated her, but then was unhappy about it and said it interfered with them working things out in their relationship.
- [195] She was unable to work a full-time schedule, Monday through Friday, because she worked around the father's schedule, in order to facilitate his parenting time with the child. This negatively affected her financial situation. She obtained personal loans from family members; \$10,000 from her parents, \$25,000 from her brother, and \$10,000 from one of her sisters.
- [196] The mother's future career objective is to qualify as an executive or legal assistant. She cannot currently afford to undertake the necessary training.

- [197] The parties lived together for three years and ten months. They met in July or August 2012, commenced a marriage-like relationship in January 2013, and separated at the end of September 2016.
- [198] The functions performed by each spouse during the period they lived together were determined on a gendered basis. In the mother's testimony she succinctly described their respective functions this way: "I took care of [the child], he went to work".
- [199] There is no agreement or order relating to support.

A retroactive lump sum award is appropriate

- [200] I find a retroactive award is appropriate, because my analysis of the factors I must take into account in determining the appropriateness of a retroactive award yields the same result as for retroactive child support, and I have no concerns about notice, delay and misconduct.

The lump sum award - \$74,207

- [201] Recognizing that lump sum spousal awards are exceptional, I find that in the circumstances a lump sum award of \$74,207 is appropriate.
- [202] The mother seeks an order for a lump sum award. The father contests the mother's eligibility for spousal support, but he does not otherwise oppose a lump sum award.
- [203] Under the SSAG, there are two basic income-sharing formulas for determining the amount and duration of support: the "with child support" formula, which applies when there is a concurrent child support obligation; and the "without child support" formula, which applies where there are no dependant children: Chutter, at para. 108. In this case, the "with child support" formula applies.
- [204] Application of the SSAG "with child support" formula, using a child support payment of \$1,356 a month, with income of \$150,000 for the father and \$20,000 for the mother (as suggested by the mother), provides a SSAG range for monthly spousal support from \$2,105 (low) to \$2,629 (mid) to \$3,117 (high). These monthly amounts correspond to a lump sum range for spousal support from \$140,364 (low) to \$173,371 (mid) to \$206,331 (high).
- [205] The mother says the court should make a mid-range lump sum spousal support award in the amount of \$74,207, based on income of only \$100,000 for the father.
- [206] I find the mother's submission for a lump sum spousal support award of \$74,207 is reasonable, because I have imputed income of \$150,000 to the father and the SSAG ranges corresponding to that amount indicate a potential lump sum award much greater than \$74,207. Additionally, although I have not found the father's hardship claims persuasive, making a lump sum award based on income of only \$100,000 for the father is a fair way to also account for the father's financial responsibilities towards M.R. and his two children with her.

[207] The father is not entitled to any credit for prior payments, because he has not paid any spousal support to the mother.

Charge Against Property

[208] The issue for determination is whether I should order a charge to be registered against [address omitted], Dawson Creek, B.C. to secure payment of the child support and spousal support orders.

[209] The mother seeks an order for the charge against the property. The father makes no submission.

[210] Under s. 170(d) of the FLA, in an order for child or spousal support, the court may order that a charge be registered against specific property to secure payment.

Discussion and Decision

[211] I make the order sought, because the child support and spousal support orders involve significant amounts, the father is the registered owner of the property, a charge against the property will secure payment of the child support and spousal support orders, and the father does not oppose the order.

Ongoing Disclosure

[212] The issue for determination is whether I should make an order requiring the father to provide employment income information, and particularized financial disclosure related to the company, and any other business entities he has either a beneficial or ownership interest in: filed financial statements, closed general ledgers, and T5 dividend slips; no later than the first of June every year; with the financial statements to include, at a minimum, the balance sheet, statement of income and expenses, and notes to the financial statements.

[213] The mother seeks the order for disclosure. The father is opposed on the basis that it overreaches.

Discussion and Decision

[214] I make the order sought, because requiring the father to provide the disclosure which the mother seeks on an annual basis is justified, due to the father's prior failures to comply with his disclosure obligations.

Special Costs or Fine

[215] The issue for determination is whether I should order special costs or a fine, because the father failed to comply with his disclosure obligations.

[216] The mother seeks an order for special costs or a fine. The father is opposed.

[217] Under Rule 16-1(1)(b)(i), the court can order special costs.

[218] The kinds of conduct warranting an award of special costs were identified in *Wang v. Jiang*, 2020 BCSCC 1761, at para. 17 as including "failing to disclose documents and delaying in disclosing documents".

[219] Under s. 213(2)(d)(iii) of the FLA, the court has various powers of enforcement, including to order a person to pay a fine up to \$5,000, if there has been non-compliance in the circumstances identified in s. 213(1).

Discussion and Decision

[220] I dismiss the mother's application for special costs, because while I have found that the father failed to comply with his disclosure obligations, I do not consider his conduct to have been so reprehensible that it should be denounced with an order for special costs. I am, however, mindful that it would be inappropriate for the court to condone the fact that the father failed to comply with his disclosure obligations. In my view, the issue is better dealt with pursuant to the court's power of enforcement under s. 213 of the FLA.

[221] Under s. 213(2)(d)(ii) of the FLA, if there has been non-compliance in the circumstances identified in s. 213(1), which I find there has been, the court may order a person to pay an amount not exceeding \$5,000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure.

[222] I find the father's failure to comply with his disclosure obligation affected both the mother and the child. Accordingly, I order the father pay the mother \$3,500.

[223] The mother is entitled to her costs.

Orders and Conclusion

[224] I make the following orders.

1. C.G.A. is a resident of British Columbia and commencing January 1, 2022 is imputed a gross annual income of \$150,000.
2. J.A.A. is a resident of British Columbia and has a gross annual income of \$20,000.
3. C.G.A. will pay to J.A.A. the sum of \$1,356 per month for the support of the child, born [date omitted], commencing on October 1, 2024 and continuing until the child reaches the age of majority.
4. C.G.A. will pay to J.A.A. the sum of \$644 per month for retroactive support of the child, born [date omitted], commencing on October 1, 2024 and continuing until the amount of \$38,038.75, plus interest, has been paid in full. The payments will be credited to the principal before the interest.

5. The parties will contribute to the child's special or extraordinary expenses on a proportionate basis, as follows: C.G.A., 88% and J.A.A., 12%.
6. If either party has an extended medical or dental plan or health plan through work or otherwise, the party will place and keep the child on their plan, for as long as the child is eligible for support under the FLA or until further court order or agreement. If and when the child is no longer eligible to be on a party's plan, that party will immediately notify the other party in writing, to advise of this in advance of the child being taken off the plan.
7. For as long as the child is eligible to receive child support, the parties will exchange:
 - a) Copies of their respective filed and complete income tax returns for the previous year, including all attachments, not later than the first of June of every year;
 - b) Copies of any notices of assessment or reassessment received by them from CRA, immediately upon receipt.;
 - c) The most recent annual statement of earnings, including but not limited to: overtime, bonuses, commissions, trust income and dividends, not later than the first of May of every year;
 - d) Any other information or documentation to facilitate adjustments, if any, required to review the child support amounts payable.
8. Pursuant to s. 213(2)(e) of the FLA, C.G.A. will provide to J.A.A. the following financial disclosure concerning the company, as well as any other business entities he has either a beneficial or ownership interest in, by the first of June of every year: filed financial statements, closed general ledgers, and T5 dividend slips; with the financial statements to include, at a minimum, the balance sheet, statement of income and expenses, and notes to the financial statements.
9. Any information a party must provide to the other party that is not available by the required date, must be delivered to the other party within 14 days of the information being received.
10. Each party is under an obligation to notify the other immediately upon becoming aware of a material change in circumstances that may affect their child support obligations and entitlement to apply for a variation.
11. The parties will perform an accounting by the first of July of every year to ensure that C.G.A. has paid J.A.A. the appropriate amount of child support for the previous year.
12. The parties will perform an accounting by the first of July of every year to ensure that each party has paid the appropriate share of the child's special or extraordinary expenses for the previous year, and the party who has paid less than required will pay the amount of the deficiency to the other party within three days of the conclusion of the accounting.

13. C.G.A. shall immediately pay to J.A.A. \$74,207 for lump sum spousal support in lieu of periodic support, and no part of the lump sum spousal support is to be deducted or included in calculating income under the Income Tax Act (Canada) except to the extent of interest paid on the lump sum spousal support payment.
14. Pursuant to s. 170(d) of the FLA, a charge shall, immediately be registered against C.G.A.'s property located at [address omitted], Dawson Creek, British Columbia, to secure payment of child support and the lump sum spousal support, plus interest.
15. Pursuant to s. 213(2)(d)(ii) of the FLA, C.G.A. shall immediately pay to J.A.A. \$3,500 for his failure to comply with his disclosure obligations.

[225] In conclusion, I thank counsel for their assistance.

"B. Smith J."

B. SMITH J.

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