

CANADA / JUDGMENT

J.A. v. K.A.

2024 BCSC 2084

COURT

Supreme Court of British Columbia

DECIDED

18 November 2024

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2024 BCSC 2084 J.A. v. K.A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.A. v. K.A.,

2024 BCSC 2084

Date: 20241118

Docket: E212392

Registry: Victoria

Between:

J.A.

Claimant

And

K.A.

Respondent

Before: The Honourable Madam Justice Fitzpatrick

Supplementary / Additional

Reasons for Judgment

Counsel for the Claimant:

J. Stamm

The Respondent, appearing on own behalf:

K.A.

Counsel for the Child, J.M.:

K. Marks

Place and Dates of Hearing:

Victoria, B.C.

October 24, 2024

Place and Date of Judgment:

Victoria, B.C.

November 18, 2024

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INTRODUCTION

- [1] In April/May 2024, I presided over a trial to settle all of the parties' family law issues.
- [2] On July 4, 2024, I issued my reasons for judgment: J.A. v. K.A., 2024 BCSC 1195 [Reasons]. In the Appendix to the Reasons, I set out the specific provisions of my orders, that I intended could simply be imported into the Final Order (the "Draft Final Order").
- [3] This hearing was convened to address two matters:
- a) Paragraph 49 of the Draft Final Order gave the parties leave to appear to settle the terms or address any other matter that should have been addressed in the final order. J.A.'s application seeks certain "clarifications" or directions in respect of the Final Order; and
 - b) Paragraph 33 of the of the Draft Final Order adjourned the determination of the amount of retroactive and future child support payable by J.A. for T.J., pending K.A. providing the Court with evidence as to support paid by T.J.'s biological father (see Reasons at paras. 282-283). K.A. now applies to settle that amount.
- [4] I do not intend to repeat what is found in the Reasons, save as is needed to address the current issues. In addition, as I have done above, I will continue to use the definitions found in the Reasons.

THE CLARIFICATION ISSUES

- [5] J.A. seeks the Court's directions with respect to the Reasons, as discussed below.
- a) Family Home Sale Proceeds
- [6] In late August 2024, the Family Home was sold.
- [7] As a result, the parties were able to divide the proceeds in accordance with the various financial awards set out in the Reasons. After payment of real estate commission and the mortgage, J.A.'s counsel received net sale proceeds of approximately \$890,000.
- [8] I reviewed the accounting issues with both parties. On September 3, 2024, J.A.'s counsel prepared a revised accounting which allowed for payments of \$539,570.86 to K.A. and \$304,048.32 to J.A.
- [9] Some later adjustments were required, which will result in a further amount of \$5,877.22 payable to K.A. and a further amount to J.A.
- [10] Still yet to be addressed are other amounts that remain in trust relating to two issues:
- a) \$25,000, from J.A.'s share with respect to the potential for child support for T.J. (Reasons at para. 283). I will address that issue in these reasons; and

- b) \$14,250, a 25% holdback to address potential taxes on the \$57,000 retroactive lump sum spousal support award (Reasons at paras. 349-350). I will address that issue in the conclusion of these reasons.
- b) Pre-Trial Costs Awards
- [11] J.A. was awarded costs earlier in the proceedings, both in this Court and the Provincial Court. Specifically, Provincial Court Judge McKimm ordered on October 13, 2022 that K.A. pay a \$1,000 fine, and Associate Judge Bouck ordered on April 24, 2024 that K.A. pay the costs of an unsuccessful application, in any event of the cause. Although both of these orders were brought to my attention during the trial, no orders were sought with respect to them. J.A. now seeks my order that K.A. pay those costs. Yet, J.A. has not sought to have those costs assessed and I am not in a position to summarily do so. J.A. may proceed to address these costs awards as he sees fit.
- c) Spousal Support Review/Termination
- [12] J.A. seeks an addition to para. 46 of the Draft Final Order that would set a date for either termination or review of K.A.'s spousal support. J.A. did not seek any such relief at trial.
- [13] In the Reasons at para. 344, I found that K.A. had established entitlement to spousal support based on need. Indeed, it was only as a result of the Reasons issued in July 2024 that J.A.'s proper support obligations were established so as to remedy his egregious failure to pay any support for K.A. after he ejected her onto the street with little or no resources in July 2021.
- [14] There is no indication in the minimal time since the Reasons were issued - almost four months - that K.A. has been able to make any strides toward regaining employment.
- [15] I see no basis upon which to set any termination date for spousal support.
- [16] As for any review, J.A.'s counsel suggests a review date of July 2026.
- [17] I conclude that setting a review date is not appropriate under s. 15.2 of the Divorce Act. R.S.C. 1985, c. 3 (2nd Supp.). In doing so, I am mindful of the comments found in *Leskun v. Leskun*, 2006 SCC 25 at paras. 36-39 as to when review orders may be justified and, if so, on what terms.
- [18] After the lengthy and extremely contentious litigation history of this matter, I resolved the issue of spousal support based on the evidence before me where the relative financial circumstances of the parties were not in doubt, including into the near future: *Schmidt v. Schmidt*, 1999 BCCA 701 at para. 9; *Westergard v. Buttress*, 2012 BCCA 38 at para. 23. J.A.'s suggestion for a review date, only two years after that time, is only an invitation to continue this bitter and destructive litigation.
- [19] The parties should proceed on the basis of my decision, subject of course to the appeal and, also subject to any variation that may be appropriate based on a change of circumstances under s. 17(4.1) of the Divorce Act.

d) Dissemination of the Reasons

- [20] J.A. seeks an order that neither party disseminate the Reasons to third parties, save and except legal counsel. He asserts that this is needed to "protect J.M.'s standing in the community".
- [21] During the trial, the parties raised the issue of how the parties and the children would be identified in the reasons to be issued. I advised them that I would be anonymizing names in the reasons for judgment, just as I have done in the Reasons. In addition, I have not published the Reasons as yet..
- [22] J.A.'s counsel has not provided any evidence that would support that K.A.'s use of the Reasons has affected J.M., including as he alleges. Nor has he provided any case authority which might support the extraordinary relief sought toward enjoining K.A. from using the Reasons as she might see fit.
- [23] I decline to grant any such relief.

e) J.M.'s School

- [24] J.A. sought an order that the Court "confirm" the terms of the Draft Final Order (para. 10(d)) that K.A. not change J.M.'s current school without his agreement or court order.
- [25] J.M. is in his final year at his current elementary school. In addition, K.A. has indicated that she has no intention of changing his school. As such, no "confirmation" is required, although hardly needs to be said that this Court does not need to repeat its order so to give them more force beyond the original pronouncement.
- [26] After this school year, K.A. will be in position to make a decision as what school J.M. will attend, in accordance with her parenting responsibilities under the Draft Final Order.

J.M. ISSUES

- [27] Just as the trial mostly occupied issues relating to J.M., J.A.'s "clarification" issues also included issues related to the parties' parenting of J.M.
- [28] I accept that many of these issues were not anticipated by J.A. since he fully expected that he would succeed at trial - including that he would be awarded most of J.M.'s parenting time and full parenting responsibilities for J.A. so that he could continue to exercise overall control over the child - and that he would have certain control measures over K.A.'s parenting time and activities with the child (see for example, Reasons at paras. 227, 240-241).
- [29] In fact, the Draft Final Order was, for the most part, a "mirror image" of the final order proposed by J.A., which he considered was reasonable in respect of both him and K.A. (save that I ordered equal sharing of parenting time as sought by K.A. and as was supported by J.M. also). In the result, I found that K.A. stood as the parent who was most likely to advance J.M.'s best interests, particularly for the reasons set out in paras. 198-247 of the Reasons.

- [30] Unfortunately, but perhaps not unexpectedly, the parenting issues between the parties have not abated since July 2024.
- [31] As a result, in his notice of application filed October 4, 2024, J.A. seeks various orders relating to J.M. that were not addressed at the trial, either in the evidence or argument. The same can be said for K.A.'s application filed October 22, 2024, whereby she seeks a variety of orders (in addition to those relating to T.J.'s child support), although I will only address one item (para. 26) in these reasons. Neither party has sought to re-open the evidentiary portion of the trial.
- [32] The evidence relating to these post-trial issues is found in the various affidavits filed by the parties (J.A.'s Affidavits #17 and #18, sworn October 3 and 21, 2024; K.A.'s Affidavit #24, sworn October 16, 2024). As such, the results of these applications does not affect the Draft Final Order, but can be considered as separate and later applications based on that evidence.
- [33] I will discuss each of J.A. and K.A.'s specific requests below. In either granting or declining those requests, I have only had regard to the best interests of J.M.
- a) The Air Tag Incidents
- [34] One matter that arose after the Reasons were issued, were the difficulties in arranging both parties' trips to Eastern Canada over the summer of 2024. Paragraph 24 of the Draft Final Order allowed travel over 48 hours, with advance notice and after providing a "detailed itinerary".
- [35] J.A. travelled to Ontario/Quebec with J.M. during the summer. K.A. also planned a trip to Ontario with the children. She provided details of the trip in late August 2024, including that they would be staying with T.J.'s father in Ontario and that they may cross into the U.S. J.A. took the position that this itinerary was not detailed enough, and that he wanted the specific address of T.J.'s father. K.A. refused, citing security concerns in respect of releasing that information to J.A.
- [36] On August 15, 2024, I heard K.A.'s urgent application to approve the trip, given that their departure was imminent. I agreed with K.A. that it was not necessary to provide the specific address; instead, I ordered that K.A. would keep J.A. reasonably informed of her travel plans with J.M. while they were away.
- [37] Unfortunately, that was not the end of the controversy between the parties.
- [38] On September 1, 2024, the last day of K.A. and J.M.'s trip, they were at the airport. K.A. received a notification on her cell phone that a tracking device was nearby. Upon their return to Victoria, she learned from J.M. that there was a tracking device - an Air Tag - in his backpack that allowed J.A. to track its location and also that J.A. had been tracking J.M.'s movements (including the location of T.J.'s father) while they were away via the location app in their respective iPhones. J.A. had insisted that J.M. take his iPhone with him on K.A.'s trip to Ontario.

- [39] J.A. states that there have always been Air Tags in J.M.'s school bag, in the event that he loses the bag. J.A. states that he has since removed it. In addition, J.A. indicated that he placed an Air Tag on J.M.'s video game device since he can't afford to lose it.
- [40] However, J.A.'s explanation for the Air Tags and tracking on the iPhones is very much put into doubt, particularly given K.A.'s evidence as to how it was discovered.
- [41] Initially, I would observe that, if J.A.'s intention was to avoid a loss of these items, why would he not have advised K.A. of the Air Tags so that she was aware of his intentions and that she could also take advantage of it? Why not advise her that J.M.'s phone was allowing J.A. to track its (and J.M.'s) location?
- [42] Secondly, when K.A. received the notification at the airport, J.M. attempted to explain it away by suggesting that she was picking up someone else's device. Only when they arrived home did J.M. admit to his mother that J.A. had ordered multiple Air Tags and that he had concealed one in J.M.'s backpack. J.M. also told his mother that no Air Tag was in his backpack during his travel to Ontario with J.A.
- [43] On September 2, 2024, K.A. wrote to J.A.'s counsel asking that J.A. disable any tracking devices.
- [44] However, around October 3, 2024, K.A. located another Air Tag in J.M.'s video game device. She discovered this after she had specifically asked J.M. if he had any other tracking devices on his items, which he denied.
- [45] On October 16, 2024, K.A. learned that J.M.'s phone was still being tracked by J.A.
- [46] I do not accept J.A.'s explanations for these tracking devices and incidents. The only reasonable inference that arises, particularly from the way in which the Air Tag was found in the backpack, is that J.A. deliberately placed these tracking devices without the knowledge of K.A., and after co-opting J.M. in hiding its concealment.
- [47] In addition to the significant invasion of K.A.'s privacy interests, this stands as yet another example of J.A.'s attempt to exercise control, with no regard for the damage done to K.A. and her relationship with J.M. That relationship is now marred by some suspicion and mistrust in terms of whether J.A. is involving the child in this egregious behavior.
- [48] I must return to a comment I made at para. 76 of the Reasons which stands as a continuing and significant concern regarding J.A.'s motivations in respect of J.M.'s parenting and his ability to put J.M.'s best interests ahead of his own:

At best, J.A. has little or no insight into his actions in terms of the consequences of his actions to others, including K.A., T.J. and J.M.

- [49] At this hearing, J.A. indicated that he had no intention of using these Air Tags in the future, save for the video game device. While I might have accepted this statement as sufficient, I have reflected on the matter and now consider that it should be accompanied by an order.

[50] I grant the order sought by K.A. that J.A. is prohibited from engaging in any surveillance or tracking of K.A. at any time, or from any surveillance or tracking or tracking of J.M. or any personal items used by him while he is with K.A., save as is pre-approved by K.A.

b) J.M.'s Social Insurance Number

[51] J.A. seeks an order that K.A. provide him with a copy of J.M.'s Social Insurance card. He claims to need J.M.'s social insurance number (SIN) for tax purposes.

[52] While K.A. may quibble with the fact that J.A. did not see fit to record the SIN when he had the card, I see no reason why J.A. should not have the information.

[53] K.A. is to email J.A. with details of J.M.'s SIN within 10 days of the release of these Supplementary Reasons.

c) Right of First Refusal

[54] J.A. seeks an order requiring that the parties offer each other a right of first refusal prior to leaving J.M. in the care of a third party, if such care would be overnight or longer. He did not seek such an order at trial.

[55] Both parties assert to me on this application that they have no intention of leaving J.A. with any other person in such circumstances. At no time has J.A. offered this to K.A., and vice versa.

[56] I see no need for this order. If nothing else, it would likely stand as another point of controversy between the parties.

d) Extra Activities for J.M.

[57] J.A. seeks an order that he be given the parenting responsibilities of registering J.M. for activities that occur solely on his parenting time, at his sole cost.

[58] I have already assigned the parenting responsibilities to K.A. in the Reasons.

[59] Like any parent, decisions must be made about the level of extra-curricular activities of a child, given the overall circumstances, including schooling and unscheduled time with each parent. Under the Reasons, that person or parent is K.A. The costs of extra-curricular activities which the parents have agreed upon are shared between the two parents (Draft Final Order, para. 34(e)).

[60] At this hearing, K.A. expressed concern about whether any additional activities were appropriate for J.M. She proposed enrolling J.M. in water polo, but was unable to do so since J.A. did not agree. She considered that other activities, such as hockey, could have been dispensed with. J.A. did not agree. At present, J.M.'s activities remain parkour, hockey and soccer, because neither parent can agree to any change (Draft Final Order, paras. 10(d)) and 34(e)).

- [61] J.A. has not provided any detail to K.A. or the Court that would allow an assessment of the appropriateness of any extra activities that require registration - beyond a general reference to archery. J.A.'s broad request seems to be nothing more than an attempt to regain sole control over aspects of J.M.'s life that he had before.
- [62] Finally, there is the matter of cost and J.A.'s conflicting evidence on that point. J.A. states that he refused to allow J.M. to be registered in water polo because he cannot afford to pay for this new activity given that he is at the "edge of his financial resources". Yet, in contrast, he now states that he is quite prepared to pay for the activity in full, provided it is on his own time.
- [63] I conclude that J.A.'s proposal is only an invitation to allow each parent to choose extra activities with the prospect of J.M. wanting to continue those activities not just every other week, but at all times - which puts the other parent in a difficult position. I do not consider this is in the best interests of J.M. in that conflict is not only likely, but very probable. J.A. is already inviting this conflict and stress by insisting that K.A. tell J.M. directly that she did not agree to the archery, rather than presenting the decision as one arrived at after a joint discussion between the parents.
- [64] Both parties should consider J.M.'s interests and wishes in respect of these types of choices. Any decisions made should not be a contest of wills; nor should it result in the laying of blame on the other parent to undermine that relationship and/or curry favour with J.M.
- [65] If this stalemate between the parties continues, I expect that it may be appropriate to assign sole decision-making to one party only, whether or not the other consents (which is part of K.A.'s application that is not being addressed at this time).
- [66] I decline to grant any such relief at this time.
- e) Volunteering / Coaching / Activities
- [67] J.A. seeks an order that either party is at liberty to attend at J.M.'s activities, including volunteering or coaching, regardless of the parenting schedule, provided that the parties not communicate directly with each other during such activities.
- [68] I conclude that allowing J.A. to volunteer at J.M.'s activities and school is problematic.
- [69] Firstly, J.A. has not provided any details on what volunteer opportunities are available and when he would be attending those activities (at the school or otherwise). In addition, this is J.M.'s last year at elementary school, which is already underway, and no doubt the soccer and hockey seasons are as well. As such, it is difficult, if not impossible, to assess this request.

- [70] J.A. seems intent on spending any spare moment in the presence of J.M., in addition to his regular half of the parenting time. He seemingly intends to take time during the middle of his work days to do so. K.A. considers that J.A. is intent on "smothering" J.M. in order to ameliorate the effects of the Draft Final Order and encroach into her parenting time.
- [71] I have concerns that allowing J.A. carte blanche access to J.M. at all times through volunteering would be nothing more than a means by which J.A. would seek to continue his efforts to hinder the betterment of that mother/son relationship, all to the detriment of J.M.'s best interests.
- [72] As stated above, K.A. is the parent with overall parenting responsibilities regarding the school and J.M.'s activities. There is the potential for conflict if she is attending the school, or dealing with other people concerning J.M., including the coaching staff, and J.A. is there too. This is best avoided, particularly given the potential stress for J.M. I accept K.A.'s statement that it is in J.M.'s best interests to allow him time away from both parents to explore his own interests and develop his own relationships.
- [73] Finally, there is the matter of K.A. equally attending J.M.'s events and equally supporting J.M. in his activities, all toward re-establishing and repairing the damage done to the mother/son relationship as a result of J.A.'s litigation strategy.
- [74] I consider it in J.M.'s best interests that each party may attend J.M.'s scheduled activities on their own parenting time, but not on the other party's parenting time. Such an approach avoids any potential conflict which causes stress for J.M. I decline to make any order allowing J.A. to volunteer or coach at the school or at those activities.
- f) J.M.'s Counselling
- [75] At the time of the trial, J.M. was engaged in counselling at Cascadia with "Yuko".
- [76] J.A. seeks an order that the parties maintain J.M.'s counseling with Cascadia/Yuko and not change J.M.'s counselor absent agreement of the parties or further court order.
- [77] K.A. advises that she was not happy with Yuko which resulted in her terminating that relationship shortly after the Reasons were issued. She advises that she is currently looking into other counsellors for J.M.
- [78] I see no reason to second guess K.A. in this matter, in terms of her exercising her best judgment as to what is in J.M.'s best interests, as is allowed under the Reasons.
- g) Professional Contact Information
- [79] J.A. seeks an order that K.A. provide him with the names and contact details for any professionals that are engaged with J.M., promptly upon their engagement.

- [80] I agree that either party should let the other parent know if J.M. is being seen by a health care professional. For example, J.M. recently attended at an eye doctor and K.A. advises that she advised J.A. of that fact. I expect that K.A. would be the parent most likely to arrange such visits, given her parenting responsibilities under para. 10(f) of the Draft Final Order, although J.A. may also do so arising from his day-to-day parenting responsibilities (para. 11(a)).
- [81] I order that, upon engagement of any health care professional services, the party who did so will, within a reasonable period of time and no later than 10 days after the fact, communicate that fact and the name and contact details of the professional to the other party.

T.J. CHILD SUPPORT

- [82] K.A. seeks an order to establish regular child support payable by J.A. for T.J., retroactive to the time of the parties' separation in July 2021. In addition, she seeks an award that J.A. pay a portion of T.J.'s special expenses because, in August 2022, J.A. removed T.J. from his benefits provided by his employer.
- [83] At para. 280 of the Reasons, I found that J.A. had a duty to provide some support for T.J. from the time of separation, albeit on a secondary basis. At paras. 282-283 of the Reasons, the matter of the amount to be paid by J.A. was adjourned pending K.A. providing evidence regarding the support payments made by T.J.'s father, Miklos Iacob, as well as his financial means. This information was to be provided by October 2024 (clarified to be October 1, 2024 at para. 33 of the Draft Final Order).
- [84] The first issue raised by J.A. is that K.A.'s evidence was not provided by October 1, 2024.
- [85] In all the circumstances, I grant leave to K.A. to consider the matter on the merits, despite her not meeting the deadline. The October 25-26, 2024 hearing dates were suggested by the Court at the August 15, 2024 hearing given my lack of availability to hear any further applications until later in October 2024. In addition, J.A.'s counsel did not have any availability until later in October 2024. K.A. provided her unfiled evidence in advance of this hearing, allowing J.A. to respond as he did on the merits.
- [86] Turning to the merits, the evidence now before the Court is found in K.A.'s Affidavit #24.
- [87] K.A. and Mr. Iacob were in a common-law relationship while they lived in Ontario.
- [88] As stated in the Reasons at para. 10, K.A. and Mr. Iacob have maintained a very cooperative relationship even though K.A. moved to BC with T.J. in 2010. Given that level of support and trust, K.A. and Mr. Iacob never entered into any written agreement concerning support for T.J.

- [89] Nevertheless, over the years of the parties' relationship (2013-2021), T.J. was supported by Mr. Jacob on an informal or ad hoc basis, with contributions that K.A. describes as significant. At K.A.'s request, in 2015, Mr. Jacob began making contributions to a RESP for T.J., with total contributions of \$22,450 to 2024.
- [90] Despite J.A. questioning the accuracy of K.A.'s evidence concerning Mr. Jacob's present circumstances, she has provided documentation regarding his income and financial wherewithal. In addition, K.A. visited Mr. Jacob just recently in August 2024 and would have been in a position to observe his circumstances first hand.
- [91] K.A. states that, after the July 2021 separation, when she and T.J. were evicted from the Family Home, Mr. Jacob temporarily covered living expenses for them both. In addition, Mr. Jacob has taken on financial responsibility since that time for T.J., which K.A. relied on to provide her son adequate care.
- [92] Mr. Jacob reported the following line 150 income amounts (employment incomes plus a small amount of professional income): 2021 - \$84,210 and 2022 - \$77,573.
- [93] For 2023, Mr. Jacob reported \$36,556 of line 150 income, which appears not to include disability income that he received (\$891 per week) for some unspecified amount of that year after his heart surgery in May 2023.
- [94] K.A. states that Mr. Jacob returned to work in January 2024, but he retired (at age 65) in July 2024. From January-June 2024, his income was \$32,992. As of July 2024, Mr. Jacob's monthly income arises from a CPP retirement pension (\$1,205) and OAS (\$677) for a total of \$1,882 per month, or \$22,584 per year.
- [95] K.A. states that, since her separation from J.A. and her extreme financial hardship to the time of trial, she received approximately \$60,000 from Mr. Jacob. This included a substantial payment of \$15,000 in January/February 2024 and a further payment of \$20,000 in March 2024, which K.A. said was very much needed by her given J.A.'s continued refusal to provide any support for her.
- [96] K.A. advises that she learned of Mr. Jacob's diminished financial circumstances as of July 2024 only upon gathering up the necessary documentation for this hearing. She states that Mr. Jacob has found it necessary to ask her for \$20,000 be returned to him for that reason.
- [97] I see no merit in J.A.'s argument that the above information is not supported by the evidence provided by K.A. I accept K.A.'s evidence on this issue. The fact that no written agreement exists does not detract from her evidence which establishes that support has been paid by Mr. Jacob as she describes.
- [98] In the event that I accepted that some amount was appropriately payable by J.A., either in the past or into the future, neither K.A. or J.A.'s counsel provided any assistance in approaching the issue, either with case law or DivorceMate calculations.

[99] Although this is not necessarily a mathematical exercise, the Guidelines are helpful in assessing whether it is reasonable that J.A. pay child support for T.J. and, if so, in what amount. The table below illustrates various monthly amounts.

Year

J.A. Line 150 Income

Monthly Table Amount Payable by J.A.

Mr. Jacob Line 150 Income

Monthly Table Amount Payable by Mr. Jacob

Monthly Difference between J.A. and Mr. Jacob

2021

\$126,125

\$1,163

\$84,210

\$785

\$378

2022

\$140,258

\$1,280

\$77,573

\$723

\$557

2023

\$143,061

\$1,301

\$50,000 (est.)

\$461

\$840

2024

\$143,061

\$1,301

\$45,000 (est.)

\$418

\$883

[100] If one considers that Mr. Jacob paid \$60,000 to K.A. since separation in July 2021 (36 months to June 2024), that equates to a monthly payment of \$1,666, an amount well in excess what she might have otherwise claimed from Mr. Jacob under the Guidelines.

[101] In my view, based on that financial support for K.A. and T.J. to June 2024 - which I consider to be essentially child support for T.J. - I see no basis upon which to award child support payable by J.A. over that time.

[102] However, the situation has changed markedly since Mr. Jacob's retirement in July 2024. His income is now only approximately \$22,500 per year, yielding a Table amount of \$180 per month. This stands in stark contrast to J.A.'s income at \$143,061 which, for two children, yields a table amount of \$2,075 (an increase of \$774 from \$1,301 for J.M. only per para. 262 of the Reasons, which was set off against K.A.'s Table amount of \$584). The revised set-off amount is therefore \$1,491 (an increase from \$717 per month).

[103] In all of the circumstances, I conclude that it is appropriate under s. 147(5) of the FLA that J.A. provide child support for T.J. from July 2024. This is not to give Mr. Jacob a "pass" in respect of his own child support obligations, but to recognize the reality of Mr. Jacob's diminished financial ability to support T.J. after that time.

[104] In concluding that some amount is appropriate, I have also considered J.A.'s significant role as a step-parent to T.J. and his previous support for the child in providing the standard of living during the parties' relationship. K.A.'s evidence is that T.J.'s standard of living is being seriously affected by his present circumstances. See for example, *S.C. v. K.M.*, 2011 BCSC 1358 at paras. 89-90, 112-113; *Shen v. Tong*, 2013 BCCA 519 at paras. 59-1; *Duffy v. Boisvert*, 2017 BCSC 500 at para. 40; and *Code v. McLeod*, 2023 BCSC 1686 at paras. 72-76.

[105] I award K.A. child support for T.J. payable by J.A. from July 2024 in the amount of \$500 per month.

[106] In addition, from July 2024, the parties will share any special and extraordinary expenses incurred for T.J. in accordance with para. 266 of the Reasons, being 60% for J.A. and 40% for K.A.

[107] This child support award has no effect on the spousal support ranges which I discuss at paras. 347 of the Reasons. Accordingly, no adjustment to the retroactive spousal support or future spousal support award is necessary.

CONCLUSION

[108] There is no need to alter the Draft Final Order given my conclusions on the clarification issues, discussed above.

[109] The following additional orders are granted:

- a) J.A. is prohibited from engaging in any surveillance or tracking of K.A. at any time, or from any surveillance or tracking of J.M. or any personal items used by him while J.M. is with K.A., save as is pre-approved by K.A.;
- b) K.A. will email J.A. with details of J.M.'s SIN within 10 days of the release of these Supplementary Reasons;
- c) Each party may attend J.M.'s scheduled activities on their own parenting time, but not on the other party's parenting time; and
- d) Upon engagement of any health care professional services, the party who did so will, within a reasonable period of time and no later than 10 days after the fact, communicate that fact and the name and contact details of the professional to the other party.

[110] K.A. is awarded lump sum retroactive Table child support payable by J.A. for T.J. from July-December 2024 of \$3,000.

[111] Commencing January 1, 2025, and until further order of this Court or written agreement between the parties, J.A. shall pay child support to K.A. for T.J. in the amount of \$500 per month.

[112] With respect to T.J.'s s. 7 expenses from July 2024, J.A. shall pay 60% and K.A. shall pay 40%, subject to adjustments in accordance with para. 37 of the Draft Final Order, now para. 36 of the Final Order. These expenses shall include:

- a) that portion of the medical and dental insurance premiums attributable to T.J.;
- b) 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;
- c) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- d) expenses for post-secondary education; and
- e) extraordinary expenses for agreed-upon extracurricular activities.

[113] Given that K.A. has been substantially successful on these applications, I award her lump sum costs of \$1,500 payable by J.A., which amount is to be paid as set out below.

[114] I order the following payment to be made immediately with respect to the amounts withheld from the Family House net sale proceeds:

- a) From the \$25,000 amount held for T.J.'s child support, \$3,000 is to be paid to K.A. for T.J. (July-December 2024) plus \$1,500 (costs) and the remainder, \$20,500 is to be paid to J.A. Any accrued interest on the amount held is to be divided pro rata between them; and
- b) Given that neither party sought to address the tax issue regarding the retroactive spousal support, there is no need to further withhold the 25% amount (\$14,250). That amount, together with any accrued interest, is to be paid to K.A. immediately upon receipt of these reasons.

"Fitzpatrick J."

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Prepared on 27 October 2026 · Esheria