

CANADA / JUDGMENT

J.C.W. v. J.K.R.W.

2024 BCSC 139

COURT

Supreme Court of British Columbia

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2024 BCSC 139 J.C.W. v. J.K.R.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.C.W. v. J.K.R.W.,

2024 BCSC 139

Date: 20240130

Docket: E082167

Registry: Vancouver

Between:

J.C.W.

Claimant

And

J.K.R.W. aka J.K.R.D.

Respondent

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the Claimant:

T. Yu

Counsel for the Respondent:

D. Gradley

Place and Date of Hearing:

Vancouver, B.C.

November 17, 2023

Place and Date of Judgment:

Vancouver, B.C.

January 30, 2024

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Overview

- [1] The claimant and the respondent have two children, K.W. and N.W. They are both now adults. J.W. and J.F. cross-apply for orders pertaining to basic child support and s. 7 expenses. A central issue is the status of the children as children of the marriage.
- [2] The claimant is J.W. The respondent's last name now starts with F so I will refer to her as J.F. K.W. was born in May 2000 and is currently 23 years of age. K.W. uses the pronouns they/them. N.W. was born in December 2002. N.W. was 21 when the application was heard and is now 22. N.W. uses the pronouns they/them.
- [3] J.F.'s application is for retroactive and ongoing basic child support subsequent to J.W. discontinuing basic child support for K.W. in September 2020, when K.W. was 20 years old, and discontinuing basic child support for N.W. in March 2020, when N.W. was 18 years old.
- [4] J.W.'s application is for declarations that the children have not been children of the marriage since the dates at which he stopped paying child support or alternatively orders that his child support obligations are limited to paying for post secondary education up to \$8,000 per year and maximum 120 credits per year and a portion of medical expenses according to a program he asserts is appropriate.
- [5] The substantive issues are:
 - a) whether K.W.'s reduction of university course load, which they assert are due to ongoing health issues, are such that K.W. is no longer a child of the marriage;
 - b) whether N.W. ceased being a child of the marriage when they worked full time while still under age 19, and then after age 19, stopped working before attending university full time;
 - c) if either child is a child of the marriage, what the appropriate child support is prospectively and the arrears since J.W. ceased paying child supports; and
 - d) issues pertaining to s.7 expenses for university tuition and other expenses.
- [6] There are also evidentiary issues. I will start with those.

Evidentiary Issues

- [7] This family has had an extraordinarily difficult time since the parties separated in 2008 in a manner that has caused enduring problems for the health and wellbeing of K.W. and N.W. In 2014, Justice Loo concluded that "the children have become the product of alienation as a result of a number of family related factors": J.C.W. v. J.K.R.W., 2014 BCSC 488 at para. 63. In the language of parental alienation described in Loo J.'s reasons, J.W. was the rejected parent and J.F. was the favoured parent. Justice Loo ordered participation in the Family Reflections

Reunification Programme as well as interim sole custody with J.W. As matters evolved, the sole custody transitioned to shared custody. When the children graduated from high school, they each began primarily residing with J.F. in accordance with their expressed wishes.

- [8] The alienation issues and the reunification program are past, albeit unfortunate, history. However, the enduring effects of the conflict that gave rise to it and continued despite the goals of reunification can be seen to this date. The affidavits of the parties demonstrate continued distrust and animosity towards each other. The affects of the historical conflict and ongoing conflict on the children are patent in their affidavits.
- [9] The parties' evidence is contradictory on many issues including:
- a) Whether K.W. and N.W. reside with J.F. or rather, as J.W. deposes, in a self-contained suite in J.F.'s house, paying rent to J.F.
 - b) Whether K.W. is capable of working full or part time including whether they worked part time caring for their step grandparents and earning \$600 per month during a period when J.F. deposed that K.W. was struggling with severe mental health issues.
 - c) Whether K.W. stopped seeing a counsellor that both parents were paying for, because J.F. refused to pay the bills of the counsellor in order to manipulate K.W. into seeing the counsellor that J.F. prefers, Dr. Young, or whether K.W. stopped seeing the counsellor of their own accord and then could not get back to see that counsellor, subsequently choosing the new counsellor of their own accord.
 - d) Whether K.W.'s major depressive episode that began during the spring of the 2020, extended more than a few months.
 - e) Whether N.W. is seeing Dr. Young for therapy as a result of J.F.'s manipulation or as their own choice.
 - f) Whether N.W. is attending at the urging of J.F. so that J.F. can continue to receive child support.
- [10] The children remain embroiled in this conflict. It is tragically unfortunate that the current contentious topic is their post secondary education. They are both intelligent and academically gifted. Each of them has big goals and the ability to achieve them with support. One would hope that after what all of this family has been through, this could be a focus of shared family pride and commitment. Instead, it is just a new phase of their upbringing that has led to conflict.
- [11] Fortunately for the Court, K.W. and N.W. have provided affidavits that address many of the issues that their parents' evidence conflicts over. Despite that this assists the Court, it is apparent that both K.W. and N.W. are not benefited by being further involved.

- [12] In very brief summary for this part of these reasons, K.W. deposed as to their mental health issues in 2020, what counselling they have received, and physical symptoms that they began experiencing in 2021 and which they depose are significantly disabling and interfering with their university studies. K.W. deposed as to their financial circumstances, what they can afford to pay for and what they are reliant on their mother for. K.W. deposed that they have never paid rent to J.F. except notional rent that J.F. deposited into a savings plan for K.W.
- [13] N.W. deposed as to their history with mental health issues and the toll that the part time work at Safeway and then full-time work at Canada Revenue Agency ("CRA") took on it in 2020-2022. N.W. deposed that they have been able to attend university full time despite these issues, because of support from their mother, friends and therapist. N.W. deposed as to their educational goals and their plans to use the savings from their gap year employment to pay for their post graduate studies as they do not expect help from their parents at that stage of their education. N.W. deposed as to what matters they currently pay for, what their mother pays for, and why they are financially dependent on their mother.
- [14] There are no overt credibility concerns with these affidavits, provided by two intellectually capable young adults.
- [15] However, that is not the end of it. J.W. blames J.F. for the alienation and considers the distressing health evidence about their children, including their own evidence, to be the product of J.F.'s continued "gaslighting" and manipulation of the children and her continued attempts to undermine them and their relationship with him. N.W. deposed that in 2019-2020, J.W. raised with N.W. that their mother had alienated the children from him. Consistent with this, J.W. rationalizes his positions based on his characterization of the historical alienation as the fault of J.F., supporting his thesis that J.F. is continuing the same behaviours that have been previously sanctioned by the Court. In essence, he asserts that his children have not provided accurate evidence but he blames that on J.F.'s continued manipulation of them.
- [16] J.W.'s rationalization does not stand up to scrutiny.
- [17] With regard to Justice Loo's reasons, she did not find that the circa 2013-2014 alienation was the fault of J.F. or was intentional. Justice Loo held that the alienation was the result of "several family factors". She recited the s. 211 report writer's opinions attributing the alienation to several factors including biological factors, the nature of the marital conflict including that J.W. would emotionally escalate while J.F. would avoid or stonewall, J.W.'s parenting style, J.F.'s parenting style, J.F.'s then boyfriend, and the children's relationships with each other. Justice Loo described the s. 211 report writer's observations that "both parents are intelligent and capable individuals who love their children and both are able to attend to the children's various needs. There has been misguided behaviour by both parties, but no finding of child abuse": J.C.W. at para. 35.

- [18] After reading his children's affidavits on this application, J.W. swore another affidavit in which he deposed that J.F. is lying about matters despite that J.F.'s evidence is in accord with that of the children on some of those matters, and J.W.'s version of the evidence is inconsistent with that of his children.
- [19] J.W. agreed that K.W. suffered a depressive episode in the spring of 2020 but disagreed with J.F. that K.W. continued to suffer from their mental health in a disabling manner through the summer of 2020, deposing that K.W. appeared healthy and well to him. After K.W. swore an affidavit detailing continuing disabling mental health symptoms in 2020 and beyond, and physical health symptoms starting in 2021, including the use of forearm crutches due to leg and hip pain, J.W. softened his stance but continued to question whether K.W. is "disabled" because there is no diagnosis of disability. J.W. calls K.W.'s evidence about their mobility issues and pain into question, deposing that he rarely sees K.W. using their crutches and consistently saw K.W. engaging in physical activities without them and without signs of distress. Remarkably, J.W. seems to call into question K.W.'s own evidence about their physical limitations based on his experience with his own chronic medical issue, including that he has no choice as to when it will "sideline" him, but he does not see this with K.W.
- [20] J.W. also deposed that he has no doubt that K.W. is experiencing the health issues that K.W. reports. He also deposed that it is clear to him that J.F. "has not facilitated nor has interest in facilitating [K.W.] becoming independent in light of whatever those health issues are".
- [21] The line that J.W. appears to be attempting to draw is that while asserting he believes K.W., he does not accept that K.W. has medically disabling problems. Rather, he attributes K.W.'s belief that they are not able to be financially independent of their parents to J.F. not facilitating that independence.
- [22] J.W. deposed that N.W. discussed their affidavit with J.W. and was distraught about it. N.W. offered to provide a "clarifying affidavit". J.W. declined this in order to further avoid putting N.W. in the middle. In the text messages that J.W. appended to his affidavit where he tells N.W. he will not take them up on their offer to provide a further affidavit because it is mid-term time and they are busy, they replied "I would have said no anyways". This reply text calls into question whether N.W. ever did make an offer to make a second affidavit or that they said they would make a second affidavit that would clarify and correct the first affidavit. Nevertheless, J.W. deposed that he believes that J.F. "has re-engaged alienating behaviours and that trauma is being reinforced, not addressed".
- [23] Notwithstanding that J.W. deposed that he did not accept N.W.'s offer to deliver a further clarifying affidavit from N.W. in order to avoid putting them in the middle, he continued to give evidence and take positions that are contrary to N.W.'s evidence about their mental health and financial situation.

- [24] J.W.'s view of his children's evidence is based on his belief that J.F. is solely responsible for the negative impact of the marriage dissolution and ongoing conflict on the children, in particular the alienation. Again, this is contrary to the finding made by Loo J. There is nothing in the evidence on this application that causes me to conclude that the problems the children have at this juncture lie solely at the feet of J.F. or are currently being created or facilitated by J.F.
- [25] J.W. also asserts that much of the current problems are due to misrepresentations that J.F. has made, including to Family Maintenance and Enforcement Program ("FMEP"), about the factual matters pertaining to the children.
- [26] For example, J.W. asserts that J.F. misled FMEP about K.W. attending university full time when they were not.
- [27] There are different categories for full time attendance at University of British Columbia ("UBC") depending on how many courses a student is taking for how many credits and whether the student has disability status. J.F. deposed that at one point K.W. was taking a course load that was considered to be full time for a person with a disability. J.W. disputes that they were taking such a load. J.F. also led evidence that K.W. had withdrawn from some courses. J.F. deposed that at one point in time she did not know that K.W. had withdrawn from courses and had an inaccurate understanding of K.W.'s course load.
- [28] I accept K.W.'s evidence that they can only take one or two courses at a time. I do not consider it necessary to resolve the debate between J.W. and J.F. on the issue of how many courses that K.W. was enrolled in at various times or what the status of that was so far as the university and FMEP were concerned.
- [29] I accept the evidence of K.W. and N.W. on the matters on which they have deposed. I regret that it was necessary for them to make these affidavits given that doing so may have exacerbated what are clearly ongoing negative mental health consequences of their parents' marital breakdown and this litigation.
- [30] Given that I accept the evidence of K.W. and N.W., it is not necessary for me to refer at any length to the conflicting evidence of their parents on many matters. However, where there is no evidence of the children, such as on the Registered Education Savings Plan ("RESP"), I will refer to the parties' evidence.
- [31] Generally, while I do not accept everything J.F. says in her affidavit and conclude that she also sees things from a perspective that is coloured by her view that J.W. is hard on the children and indifferent to their problems, her affidavits are much more measured and she seems to attempt to focus on the current issues.
- [32] I also do not accept everything in J.W.'s affidavits. J.W.'s evidence presents its credibility issues given the hearsay he recites which appears to be without foundation or to be inaccurate. It is also problematic because it cannot be disentangled from his inaccurate view that J.F. is solely responsible for the historical issues with the children. He projects that

viewpoint to the present to form the inaccurate view that J.F. is gaslighting and manipulating the children. Where the reality of his children's health issues cannot be squared with his views, he attributes the difference to J.F. manufacturing the problems.

Legal Principles Pertaining to Children of the Marriage

[33] Section 2 (1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) defines a child of the marriage as a child of two spouses or former spouses who:

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

Withdrawal from Charge Before the Age of Majority

[34] As provided by s. 2(1) of the Divorce Act, a child who withdraws from the charge of their parents when under the age of majority does not remain a child of the marriage. In British Columbia, the age of majority is 19.

[35] The burden of proof is on the party asserting that a child under the age of majority has withdrawn from the care of the child's parents.

[36] Jurisprudence indicates that special circumstances are required for a child under the age of 19 to be considered to have withdrawn from the charge of their parents. These circumstances could include a period of travel and work to another country (*Muxlow v. Muxlow*, 2015 BCSC 932) or a lengthy period of incarceration (*M.A. v. F.A.*, 2013 BCSC 1077). However, not every child under the age of 19 who is living away from their parents will be considered to have withdrawn from their parent's charge, especially if a parent continues to provide financial and emotional support: *G.L. v. S.J.L.*, 2016 BCSC 2401 at paras. 28-29.

Adult Children

[37] As set out in s. 2(1) of the Divorce Act, children are no longer children of the marriage after they reach the age of majority unless by reason of age, disability or some other cause they are no longer able to withdraw themselves from the care of their parents.

[38] After the age of majority, the onus is on the recipient parent to prove that the child remains a child of the marriage: *Dring v. Gehyle*, 2018 BCCA 435 at para. 49. See also *Gron v. Gron*, 2021 BCSC 1375.

[39] A child who ceases to be a child of the marriage can regain that status for a variety of reasons, including the return to post-secondary education or a finding of illness or disability that prevents them from becoming financially independent: *Hartshorne v. Hartshorne*, 2010 BCCA 327 at para. 77.

[40] If a child over the age of majority is determined to be a child of the marriage, the quantum of child support is determined according to the Federal Child Support Guidelines, SOR/97-175, as follows:

Child the age of majority or over

3(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Illness or Disability

[41] With regard to a child who has health issues, cases such as *H.M.R. v. D.G.R.*, 2010 BCSC 647; *Andrews v. Andrews*, [1995] B.C.J. No. 194, 1995 CanLII 582 (S.C.); *Lougheed v. Lougheed*, 2007 BCCA 396; *S.M.W. v. R.E.W.*, 2013 BCSC 2362; and *L.L.M. v. D.R.M.*, 2022 BCSC 143 stand for the following principles:

- a) Even if a child is living independently or semi-independently, if a parent is supplying the necessities of life due to the child's inability to earn a subsistence living because of the health issue, the child may remain a child of the marriage: *H.M.R.* at paras. 27-33; and *Lougheed* at paras. 23-26.
- b) The factors listed by Master Joyce in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C.) at 64-65, discussed below, may not be of as much assistance where disability is the reason or a reason for the child to not withdraw from parental care: *S.M.W.* at para. 18.
- c) Two important factors to consider in determining whether an adult child with disabilities is unable to obtain the necessities of life are the child's employability and the extent of the child's disability: *H.M.R.* at para. 33.
- d) Where the child lives at home and is impaired by a serious disability such that their ability to generate income is negligible, the appropriate measure to consider need is s. 3(2)(a) of the Federal Child Support Guidelines: *S.M.W.* at para. 17.
- e) A child who is disabled and is completing post-secondary studies slowly and may not be able to complete them, should not be "denied the life-enriching satisfaction of the pursuit of that study": *S.M.W.* at para. 19.

- f) Formal expert opinion evidence on medical issues and disability is not required. The evidence that establishes disability can include the evidence of a parent and the evidence of a child together with medical evidence (L.L.M at paras. 36-37), and relatively recent medical evidence is preferred (H.M.R. at para. 33).

Post-Secondary Education

- [42] Post-secondary education may constitute an "other cause" for an adult child to remain a child of the marriage within the language of s. 2(1) of the Divorce Act: *Neufeld v. Neufeld*, 2005 BCCA 7 at para. 18.
- [43] However, attendance at post secondary education alone is not sufficient: *Neufeld* at para. 18, citing with approval *Ciardullo v. Ciardullo*, 15 R.F.L. (4th) 121, 1995 CanLII 304 at para. 17 (B.C.S.C.). The court must be satisfied both that the child's education pursuits are reasonable and, if they are, that it is appropriate that the pursuits be financed by the parents: *Nordeen v. Nordeen*, 2013 BCCA 178 at para. 16.
- [44] In *Nordeen*, the Court of Appeal for British Columbia confirmed that Farden factors are of assistance in determining the reasonableness and appropriateness of parental financing of post-secondary education so long as these factors are not used as a checklist or considered to be statutorily-mandated criteria. The factors are:
- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation; and
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

- [45] It is not necessary for each of these factors to weigh in favour of continued dependence in order for the party on whom the burden lies to establish that the child is unable to withdraw from the parents' care: *Darlington v. Darlington*, 32 R.F.L. (4th) 406, 1997 CanLII 3893 at para. 15 (B.C.C.A.); *De Beck v. De Beck*, 2012 BCCA 465 at para. 31.
- [46] When an adult is pursuing the first level of secondary education and making reasonable career choices, the party applying for child support does not usually have an onerous burden to prove that the adult remains a child of the marriage: *Nitchie v Nitchie*, 2014 BCSC 468 at para. 19.
- [47] In *Gron*, Chief Justice Hinkson followed the four-part framework developed by Justice Martinson in *Wesemann v. Wesemann*, [1999] B.C.J. No. 1387, 1999 CanLII 5873 (S.C.), to determine whether child support is payable when an adult child is attending post-secondary education;
- [9] The law with respect to support for children over the age of majority can be looked at as a four step procedure:

Step One

Decide whether the child is a "child of the marriage" as defined in the Divorce Act? If s/he is not, that ends the matter.

Step Two

Determine whether the approach of applying the Guidelines as if the child were under the age of majority ("the usual Guidelines approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual Guidelines approach.

Step Three

If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual Guidelines approach is inappropriate. If not, the usual Guidelines amount applies.

Step Four

If the usual Guidelines approach is inappropriate, decide what amount is appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child?

- [48] It is not unusual for the courts to provide a grace period for children who have reached the age of majority and are not attending post-secondary education to make the transition to becoming financially independent of their parent(s): *Nordeen* at paras. 13-14; and *Hartshorne* at para. 76.

- [49] Support for an adult child who is entitled to child support because of their attendance at a post-secondary institution, should generally be determined under s. 3(2)(b), as the table amount does not contemplate a child's contribution, which is an important factor in considering the amount of support a student requires: Neufeld at para 42. Children have an obligation to make a reasonable contribution to their education, although they should also be able to retain some of their savings: Wesemann at para. 39; Rotto v. Rotto, 2014 BCSC 1320 at para. 39; and Atkinson v. Atkinson, 2011 BCSC 1816 at para. 16.
- [50] However, the appropriate approach is not to start with s. 3(2)(b) simply because the child is attending university. The legislation requires the child support to be s. 3(2)(a) unless it is determined that s. 3(2)(a) is inappropriate on the evidence. As the Wesemann framework makes clear, the burden is on the parent challenging s. 3(2)(a) child support to establish that s. 3(2)(a) support is inappropriate. See also Nordeen at para. 24.

Financial Means

- [51] A child's independent means, including savings, can also be relevant to determining whether the child remains a child of the marriage. In *D.C.A. v. R.D.M.*, 2021 BCSC 385, a 23-year old living independently in a home in which she had significant equity, affected the court's determination that she was not a child of the marriage.

K.W.

Evidence Pertaining to K.W.

- [52] It is not disputed that K.W. obtained very good grades in high school. It is also not contested that after graduating from high school in June 2018, K.W. took a gap year during which they worked. In June 2018, K.W. also began living in J.F.'s home full time. In September 2019, K.W. commenced full time studies in UBC in the faculty of science.
- [53] K.W. swore an affidavit in June 2023. K.W. deposed that the purpose of the affidavit was to provide information about their health status and educational circumstances. K.W. deposed that they did not want to do anything to interfere with their relationship with their parents.
- [54] K.W. deposed that they have had mental health issues since childhood and physical issues since approximately 2021.
- [55] K.W. deposed that in 2019 to early 2020 they were doing well in university but when classes went online due to COVID-19 they became isolated and suffered a major depressive episode. K.W. deposed that they returned to school in the fall of 2020 but again withdrew because their mental health was not good. They went back to school in 2021 on a part time basis.
- [56] Above, I referred to a conflict in the evidence of J.W. and J.F. about K.W.'s counselling. K.W. had been seeing Dr. Kormann. At some time, they started seeing Dr. Young. J.W. asserts that the change was engineered by J.F. to have K.W. switch to a psychologist who was aligned with J.F.'s perspective, having previously treated J.F. That psychologist is Dr. Young.

- [57] Dr. Young provided a report in April 2021 diagnosing K.W. with recurrent severe major depressive disorder, post traumatic stress disorder with dissociative features. He opined that K.W. experienced significant trauma in their early life that had not been dealt with or resolved and the effects were affecting K.W.'s ability to function at school. He opined that they could not attend school full time and would have to attend school at a pace that is comfortable for them.
- [58] Although J.W. did not depose about Dr. Young's report, I infer that he does not accept the portions of it that depart from his view of K.W.'s health state. J.W.'s view appears to be that he accepts that K.W. is limited in what they can do at university at this time because K.W. remains wary of overextending themselves but in J.W.'s view, K.W. is healthy and capable of working if they are not attending school full time.
- [59] K.W. deposed that they have been working with a different counsellor since 2022 who went on parental leave but will be returning soon. K.W. described this counsellor as specializing in disability and LGBTQ matters and helping K.W. navigate the school, medical and government systems. K.W. also referenced counselling using the EMDR technique to address what K.W. referred to as the trauma of their adolescent years resulting from this litigation, the ongoing conflicts between their parents and K.W.'s prolonged separation from their mother during that time.
- [60] K.W. did not make reference to Dr. Kormann or Dr. Young. I assume that is a topic they did not give evidence on because it is a hot button between their parents and K.W. asserted that they wished to avoid impacting their relationship with either parent. In any event, because there is no dispute that K.W. had a major depressive disorder in the spring 2020, the question is really whether it continued and impacted K.W.'s ability to participate in full time studies and/or work.
- [61] I conclude that I can and do accept K.W.'s evidence on this topic, especially since it is corroborated by other objective evidence and the only contrary evidence is J.W.'s evidence that K.W. "appeared healthy" to him in the summer of 2020. Major depressive disorders take time to resolve and do not announce themselves or provide status updates to onlookers.
- [62] K.W.'s evidence is that they continued to struggle with mental health issues throughout 2020 and onwards, and then developed physical symptoms in 2021. K.W. deposed that the physical symptoms aggravate their mental health and vice versa.
- [63] K.W. described the following physical symptoms that started in 2021 and increased through 2022 to the present:
- a) chronic leg pain which affects their duration of mobility and sometimes requires them to use a forearm crutch, affects how long they can stand, and affects their ability to sleep;
 - b) exhaustion and need for frequent naps which K.W. attributes to the pain;
 - c) acute hip and ankle pain;

- d) problems with balance and light headedness;
 - e) brain fog which makes it hard to concentrate, retain information, translate thought into sentences, and negatively affects memory recall;
 - f) arm and wrist pain which affects their ability to write, type, cook and participate in hobbies;
- [64] K.W. deposed that in February 2022, their physical symptoms were disabling. K.W. was unable to go to lab classes and do lab work because of safety concerns due to their physical symptoms.
- [65] K.W. deposed that they plan their days around these issues which sometimes require immediate fluids or foods. K.W. deposed that if they have a busy or long day, they try to ensure there is time for extra rest the day before and the day after.
- [66] K.W. previously enjoyed dance. They deposed that they have found a dance class for the disabled that they enjoy.
- [67] K.W. deposed that they are unable to attend school more than part-time or work more than part-time and they are unable to do both. K.W. deposed that they are unable to stay on campus after their classes are finished and they need to nap. K.W. deposed that forearm crutches help with leg pain and leg weakness and provide stability when they feel light-headed. K.W. deposed that the crutches are burdensome to carry and use, and cause worse wrist and shoulder pain.
- [68] K.W. deposed that they have been referred to a rheumatologist by their family doctor. They deposed that their family doctor and their rheumatologist, Dr. Badii, have advised K.W. that they fulfill the diagnostic criteria for chronic fatigue syndrome. K.W. appended a clinical note that Dr. Badii wrote to K.W.'s family doctor, ruling out inflammatory arthritis, a problem in their spine visible on bone scan or degenerative disc disease. Dr. Badii explained that he thought that "central sensitization" was responsible for their symptoms. He recommended that K.W.'s family doctor refer K.W. to the Complex Chronic Disease Program.
- [69] K.W. deposed that they have filled out the required paperwork for this referral but there is a two year wait list. K.W. also deposed that they have seen a cardiologist who advised them that they may have chronic dehydration.
- [70] Counsel for K.W. described the evidence about central sensitization and referral to the Complex Chronic Disease Program as essentially meaningless and emphasizes that Dr. Badii ruled out inflammatory arthritis.
- [71] I do not agree. This evidence supports K.W.'s evidence that they have serious health issues that are under medical investigation. I have no doubt that the lack of definitive diagnosis is frustrating to such a young person who has been trying to pursue an education. I have no doubt it is frustrating to K.W.'s parents. But that does not mean that K.W. does not have disabling symptoms and health problems. Moreover, central sensitization is not meaningless. It is a medical term to refer to a constellation of symptoms some of which,

such as pain, debilitating fatigue, and cognitive issues such as brain fog, are the symptoms that K.W. describes.

- [72] J.W. also points out that there is no medical opinion that K.W. is permanently disabled. That is not what K.W. or J.F. assert, nor is permanent disability, a requirement for K.W. to still be considered a child of the marriage. K.W.'s evidence that their symptoms are disabling is obviously different from a medical opinion that they are permanently disabled. That does not mean that K.W.'s evidence of what they experience and what they can accomplish, in terms of work and education, should be discounted. It is clear that the conditions are serious and in the midst of medical investigation.
- [73] K.W. deposed that when these symptoms became disabling, they withdrew again and returned to studies in September 2022 on a part time basis. K.W. deposed that as of June 2023, they are a second-year student at UBC. K.W. deposed that they hope to complete a Bachelor of Science in chemical biology and then pursue a Master's Degree in Intertidal Ecology and Science Education or become a lab technician.
- [74] With regard to finances, K.W. deposed that they used scholarships and savings to cover the cost of one semester during their first year at UBC to pay for text books, lab materials and stationary. K.W. deposed that they paid for three books in the past school year. K.W. deposed that J.W. has paid their tuition except for one semester in first year that J.F. paid for. K.W. deposed that J.F. bought K.W. a laptop, paid \$500 in repairs for it, and put \$9,000 into a Tax-Free Savings Account ("TFSA") for K.W.'s future schooling. K.W. deposed that K.W. paid for their fees for the UBC Artistic Swimming Club and for the costs of attending a competition.
- [75] K.W. deposed that they live in their mother's house and that J.F. pays for the accommodation costs, utilities, groceries, toiletries, for some clothes and for daily expenses for K.W.'s dog. K.W. deposed that they do not pay rent other than what K.W. describes as a notional amount of \$300 per month during their gap year which J.F. deposited into a TFSA for them.
- [76] K.W. deposed that they have attended for physiotherapy and massage therapy but stopped due to the cost. K.W. deposed that their UBC student benefits insurance will cover the costs of therapy up to \$1,250.
- [77] K.W. deposed that they are looking into student loans, bursaries and scholarships. K.W. has enrolled in the disabled student program at UBC and is addressing issues with their accessibility advisor, science advisor and enrollment services advisor on how to make lab works and pursuing their degree two courses at a time. K.W. deposed that they tried to apply for assistance through the provincial Persons With Disability program but was unable to finish the application within the required period of time due to their mental health struggles and time required to gather supporting documentation from doctors and financial institutions.

[78] K.W. did not address the suggestion by their father that they were paid for providing companion services to their step grandparents, or the denial by their mother that was the case. K.W. appended their 2020 and 2021 Notice of Assessment. In 2020, K.W.'s income was \$4,040. In 2021, K.W.'s income was nil. I accept that was their income in those two years.

Child of the Marriage and Child Support for K.W.

[79] In my view the evidence demonstrates that K.W. is unable to be financially independent from their parents, due to both illness and their ongoing university education.

[80] I accept K.W.'s evidence that their mental health issues continued into the summer of 2021 and affected their ability to be gainfully employed or undertake full time studies in the 2021 fall semester.

[81] The evidence that K.W. was able to help out their step grandparents during that time and that the step grandparents paid K.W. gratuitously, does not equate to employability. Nor do the amounts that the step grandparents paid, \$600 per month over a period of time that is not clear but is perhaps a year or two, amount to "earnings" that permits K.W. to withdraw from the care of their parents: S.M.W. at paras. 3, 18.

[82] Despite that the entirety and the severity of the health issues that K.W. faces are not yet fully investigated, I do not doubt the evidence that the symptoms are debilitating and disabling, and that K.W. is trying to get a diagnosis and treatment. There is no reason to ignore K.W.'s evidence as to the effect their mental health struggles, combined with their physical symptoms, have on them. K.W.'s evidence is corroborated by objective evidence such as doctor's records and notes, their acceptance as a disabled student by UBC, and Dr. Young's report. While Dr. Young's report is over two years old, the evidence of K.W.'s mental health struggles, including evidence led by J.W., demonstrates that K.W. has had severe mental health struggles since a childhood. While the evidence demonstrates that K.W. has had periods of good functioning, for example the first term at UBC, there is no evidence that they have been entirely free of these health challenges.

[83] The evidence shows that K.W. continues to work with therapists on their mental health struggles and is diligently attempting to get a diagnosis and treatment for their physical symptoms. I accept K.W.'s evidence that the onset of physical symptoms aggravates their mental health and that the pre-existing mental health problems are an obstacle to coping with the physical health problems.

[84] The fact that diagnosis and treatment are not yet available to K.W. mandates in favour of a determination that they are still a child of the marriage, not the other way around.

[85] I turn to the Farden factors. K.W. has been enrolled in studies since their gap year. While they have not been able to undertake full time studies since early 2020, they have consistently attempted to do what they can do, and have sought out treatment and university supports to continue at the level they are able. K.W. has testified that they are investigating bursaries and scholarships. K.W. has articulated a course of studies and related career

aspirations that are remarkably focussed for someone who is undertaking a first degree. There is no suggestion that they are going to university because there is nothing better to do. K.W. worked for one year, but there is no evidence that they have the ability to work part time at this time. The evidence is to the contrary. K.W. does well at the courses they are able to complete. K.W. is currently 23 years of age and if they continue at the pace they think is feasible, they will require 8 years to complete the four year degree.

- [86] I accept that K.W. intended, with the support of the parties, to undertake a university education that their parents would pay for. I accept that due to K.W.'s health issues, the first degree they intend to complete will take longer than four years. I do not regard this as being due to K.W. taking a leisurely approach or not applying themselves to this endeavour.
- [87] While the Farden factors do not play as significant a role for K.W. because of the extent of their illness, considered as a whole, they too mandate in favour of a determination that K.W. remains a child of the marriage. I conclude that due to the combination of their health issues and the priority that K.W. is placing on university education at this stage, K.W. is unable to earn a subsistence living and afford the necessities of life.
- [88] While K.W. has some savings and has used them for some of their educational costs and recreational pursuits, the evidence does not demonstrate that K.W. has the type of savings or financial means that renders them financially independent of their parents. This is not a case like D.C.A. where the adult child was living in a home in which she had significant equity.
- [89] I conclude that K.W. remains a child of the marriage.
- [90] That requires me to turn to the type of child support, and in particular, s. 3(2)(a) or s. 3(2)(b). As noted above, the approach of the Wesemann framework in cases where education is the reason that a child cannot withdraw from parents' care calls for three further steps to be followed: whether the child remains a child of the marriage; whether support under s. 3(2)(a) is challenged as appropriate, if it is challenged, decide whether it is inappropriate, and if it is inappropriate, what s. 3(2)(b) support is appropriate. A primary factual consideration is the ability of the child to contribute towards their maintenance and education.
- [91] I have determined that K.W. remains a child of the marriage. J.W. challenges s. 3(2)(a) support. His position is that if K.W. remains a child of the marriage, support should be limited to payment of tuition on certain conditions. In other words, only certain s. 7 expenses are appropriately payable.
- [92] The evidence does not support a finding that K.W. has the means to provide for themselves to any extent, and especially not while pursuing education which I consider appropriate for them to do as they have been.

- [93] J.W. believes that K.W. is employable because they provided care to their aging step grandparents and worked at a horse show. I accept that K.W. may not have declared any money that their step grandparents paid them as described above. However, the evidence of their reported earnings in 2020 and 2021 and the evidence of their lifestyle and savings do not demonstrate that they earned any amount that would permit them to contribute to their maintenance significantly.
- [94] K.W.'s has some modest savings which they have accessed for educational costs such as textbooks, stationary and lab supplies. K.W. also uses their savings to pursue some recreational pursuits. K.W. has no immediate significant prospect of adding to or replenishing their savings because of K.W.'s health problems. If s. 3(2)(a) support were to be supplanted in favour of s. 3(2)(b) because of K.W.'s savings, the savings would be quickly exhausted and the s. 3(2)(a) level of child support would be once more required. In my view, it is better for K.W. to contribute to their educational costs in the modest way that they have been.
- [95] Like in Nordeen, K.W.'s status as a child is due to a combination of their health issues and educational pursuits. In Nordeen, the evidence about that was relevant to upholding the determination that s. 3(2)(a) child support was appropriate.
- [96] J.W. has not persuaded me that this is a case where s. 3(2)(a) support is not appropriate despite the jurisprudential general principle that s. 3(2)(b) support is often appropriate for an adult child undertaking education: Neufeld at para. 42. K.W.'s situation is such that they cannot supplement very modest savings because their health circumstances preclude part time education and part time work of any significance.

N.W.

Evidence

- [97] It is not disputed that N.W. obtained very good grades in high school, took a break from education after high school graduation in June 2020 when they were 17 years old, worked for the CRA from March 2021 to April 2022, and enrolled in full time studies at UBC in September 2022.
- [98] N.W. deposed that during the year they worked for CRA, they were able to save money because they resided in their mother's home and did not pay for housing, utilities, groceries, supplies or many personal expenses.
- [99] N.W. deposed that they have struggled with anxiety issues, including panic attacks, since childhood and their parents' separation. N.W. deposed that in September 2020, they started working at Safeway part-time while taking Physics 12 and Calculus 12 for extra credits and to prepare for university. N.W. deposed that the Safeway shift work (some shifts started at 6 am and others at noon) made it hard to maintain a consistent sleep schedule and they were having multiple panic attacks. They left that work in March 2021 and took a job at CRA that

J.W. suggested.

- [100] N.W. deposed that they worked from home on call lines pertaining to Identity Protection Services and the Canada Emergency Relief Benefit dealing with taxpayers whose accounts had been flagged for unauthorized transactions or persons applying for CERB. N.W. deposed that the callers were sometimes highly stressed and the calls were very conflictual. N.W. deposed about calls that included callers yelling and calls that involved suicide threats, including one where a taxpayer threatened to blow off their head with a shotgun. N.W. deposed that they did not receive much training to deal with such situations. N.W. deposed that sometimes they had a panic attack before starting work in anticipation of the conflict to come, sometimes they cried between calls, and sometimes they had multiple panic attacks during a shift.
- [101] N.W. deposed that they initially intended to do the job for a few months. In August 2021, they renewed the contract because they were not able to enter UBC in September 2021 as planned, due to a problem getting their transcripts.
- [102] N.W. deposed that they began self-harming while working for CRA. N.W. deposed that they began taking medication for their mental health in January 2022 and then increased the dosage. N.W. deposed that by March 2022, they were struggling badly and left the work in order to have time to recover before starting university in September 2022.
- [103] N.W. deposed that they are seeing Dr. Young and has been since before graduating high school and moving in with their mother full time. Dr. Young is the counsellor who J.W. suggests J.F. has promoted, because that therapist is aligned with J.F. N.W. deposed that they are comfortable with Dr. Young despite J.W.'s opposition to that. N.W. deposed that it was their choice, not their mother's.
- [104] K.W. deposed that the CRA job was a "good job" for N.W. Despite N.W.'s affidavit evidence, in an affidavit sworn after N.W. swore their affidavit, K.W. seemingly calls into question the veracity of N.W.'s evidence that they were struggling as described, by pointing out that N.W. renewed the contract with CRA in August 2021. J.W. attributes N.W.'s sworn evidence as being the product of what J.W. believes, without any basis of knowledge, as J.F.'s view expressed to N.W. that the CRA job was bad for N.W.'s mental health.
- [105] I do not consider that point to undermine the veracity of N.W.'s evidence. N.W. appears to be a high achieving young adult and the whole of their evidence is inconsistent with a person who would overstate the struggles they were having.
- [106] N.W. testified that once at UBC, they have been able to function despite a slight decline in mental health. N.W. attributes that to the support of their mother, their friends and Dr. Young. N.W. described university as a coping mechanism because it is a distraction from their family and emotional issues.

- [107] To date, N.W. has received top grades at UBC. N.W.'s first year of studies was in the Faculty of Lands and Food Systems. After first year, N.W. transferred to the Faculty of Science. They commenced second year in the Faculty of Science in September 2023.
- [108] N.W. deposed to three educational/career options they are considering: (1) a PhD in biochemistry or similar discipline and then leading a laboratory research team; (2) a Master's Degree and work in a research lab as a secondary researcher; or (3) a Bachelor of Science in a combined major of biochemistry and forensics or biochemistry and chemistry leading to work as a toxicology lab assistant or research lab assistant.
- [109] N.W. deposed that they reside in their mother's home. They deposed that they accumulated savings while working for CRA, and over the years from birthday and Christmas gifts, as well as scholarship funds. At the time of swearing their affidavit, they had \$39,000 in savings. N.W. deposed that they plan to use their savings to pursue post graduate studies because they do not anticipate financial support from their parents for those studies.
- [110] As related above, one of the issues on which the evidence of J.W. and J.F. conflicts is whether N.W. paid rent to J.F. while working for CRA. In what is a remarkable affront to the privacy of his child, whom he considered to be an adult and for whom he had withdrawn child support, J.W. appended N.W.'s bank statements to his affidavit, showing monthly transfers of \$750 to J.F. during part of 2021. N.W. deposed that they were concerned about J.W. having access to their banking information and a past history of J.W. taking money out of N.W.'s account. J.F. deposed that as a result of N.W.'s frustrations with J.W.'s access to their bank account, N.W. transferred money, that they wished to save, to J.F. and J.F. deposited it into a TFSA. N.W. deposed that in December 2021 they opened a new bank account for this reason.
- [111] N.W. does not specifically depose to whether or not they paid any rent to their mother using those terms but N.W. did depose that the only reason they were able to save money during that period of time was that they had no expenses, including housing expenses. They deposed that their currently available funds include \$6,000 in a TFSA, the bulk of which their mother deposited during that time period. That is consistent with J.F.'s evidence.
- [112] N.W. deposed that their mother provides a home for them, pays for utilities, groceries, clothing, toiletries, cat food, cat litter, cat toys and mental health assessments and therapy. N.W. pays for recreational activities (archery). N.W. deposed that they would not be able to pay for their accommodation while attending school full time.
- [113] N.W. deposed that they have paid for some of the expenses associated with UBC including purchase of a computer, textbooks, stationary items and lab supplies. N.W. deposed that their parents have paid for their tuition by their father paying the bulk from their RESP.
- [114] At the time of making their affidavit, in June 2023, N.W. was working part time earning minimum wage.

Child of the Marriage - June 2020 to December 2021 When N.W. Was Underage

- [115] The burden of proof is on J.W. to establish that N.W. withdrew from their parents care prior to their 19th birthday in December 2021.
- [116] J.W. argues that since N.W. was making great money at 18 years of age, they had withdrawn from their parent's charge within the meaning of s. 2(1) of the Divorce Act. When N.W. started working full time for CRA, earning just under \$60,000 per year, J.W. determined that they had withdrawn from their parents' care and stopped paying child support.
- [117] A review of the caselaw demonstrates that special circumstances are required for a child under the age of majority to be found to have withdrawn from their parents' care. Those circumstances have included incarceration (M.A.); and travelling abroad while working and living financially independently of the parents (Muxlow). In G.L., an 18-year-old who had not lived with her parents for several years and was living with a boyfriend was still considered a child of the marriage because she received financial assistance and emotional support from one parent.
- [118] Based on a review of the cases such as M.A., Muxlow and G.L., and the wording of the Divorce Act, it is clear to me that having a well-paying job is not sufficient to constitute a withdrawal from the parents' care.
- [119] N.W. deposed that they were only able to save money while working during this period because their mother provided all their necessities of life including shelter, food, clothing, utilities and vet bills. J.F. provided these necessities of life despite that J.W. unilaterally stopped paying child support for N.W. N.W. had reasons to save their earnings instead of being self-sufficient; they were planning to attend university in the very near future and planning a long university career.
- [120] I conclude that N.W. did not withdraw from their parents care prior to reaching the age of 19.

Child of the Marriage and Child Support After Attaining Age of Majority in December 2021

- [121] N.W. turned 19 in December 2021. At that time, I find, based on N.W.'s evidence, that they were struggling significantly with mental health challenges, including experiencing frequent panic attacks and engaging in self-harm behaviour, while working full time for the CRA. In January 2022, N.W. started taking medication for their anxiety. N.W. started on a low dose which has increased. They take an additional medication at this time to assist with sleep.
- [122] In March or April 2022, N.W. decided that they could not take it any more and left the CRA. N.W. took a break from working to recover and prepare themselves for university studies in September 2022.

- [123] I accept N.W.'s evidence about their mental health struggles and that it was reasonable to leave the work that N.W. believed was exacerbating their pre-existing anxiety, causing frequent panic attacks and self-harming behaviour.
- [124] J.F. relies on Hartshorne, for the proposition that there can be a period where an adult child is transitioning to attending university and remains a child of the marriage despite working and not attending university. In Hartshorne, the son had turned 19 in July 2006, took courses to upgrade his high school until May 2007, and then attended university from September 2007 until April 2008. The BCCA said the trial judge had not erred by saying the child continued to be dependent until April 2008, despite making between \$9,000 and \$20,000 in each of the years 2006, 2007 and 2008.
- [125] N.W.'s break was different than in some cases such as Hartshorne, and for a different purpose. However, the jurisprudence does not stipulate that the allowance for an adult child to remain a child of the marriage when transitioning from one life circumstance to another is limited to certain circumstances. In this case, N.W. was both in a gap period between high school and university, and then transitioning from full time work for a short term period before full time university, coupled with a mental health crisis during that period. I accept that they needed time to recover and prepare for full time university. I consider this transition period, with ongoing dependence on their parents, to be appropriate.
- [126] I conclude that N.W. did not cease being a child of the marriage between attaining the age of majority in December 2021 and starting university in September 2022.
- [127] J.W. concedes that N.W. was dependent when commencing university in September 2022, but says that N.W. should be required to use their savings from their full time work to support themselves and needs only to have the cost of tuition covered by their parents. J.W. asserts that in those circumstances, no base child support should be paid, but the parties should share N.W.'s university expenses in proportion to income.
- [128] J.W. also asserts that because N.W. was able to save money while still a child and in the first few months after they turned 19, because they did not have to use it to support themselves, N.W. should use that money to contribute to their subsistence now that they are an adult. It appears that J.W. wishes to have N.W. use those earnings twice: during the year they worked full time when he stopped paying child support for N.W, and again now.
- [129] Leaving that inchoate position aside, on consideration of the Farden factors, I am of the view that N.W.'s savings, while significant for a person of their age, do not permit them to be financially independent of their parents and render them not a child given their full-time attendance at UBC.
- [130] I turn to consider the Farden factors.

- [131] At the time of this application, N.W. was 20 and commencing second year university. N.W. took full time studies in their first year and was enrolled in full time studies for their second year. N.W. is on track to finish their first degree in 2026 at age 23. N.W.'s performance at university so far is excellent.
- [132] There is no evidence that N.W. has applied for or is eligible for student loans or other financial assistance. As discussed, N.W. has impressive education and career plans for someone so early in their post secondary education. There is no suggestion that N.W. is attending university for want of something better to do. If N.W. continues with their plans, they will be pursuing education for some years beyond 2026 when they do not anticipate support from their parents.
- [133] N.W. had well-paying part-time work at Safeway and very well-paying full-time work at CRA during their gap years, both of which had negative implications for their mental health. While the stress of the CRA job is not necessarily going to be present in many jobs, the implications for sleep and routine of part time work on top of full-time studies is problematic. N.W. deposed that when they made their affidavit, in June 2023, they were doing part time work at minimum wage and were managing it despite also continuing with mental health struggles. If N.W. works half time during the summer break from university, they can earn about \$5,500.
- [134] In my view, part time work at minimum wage is not significant enough to cause N.W. to be financially independent of their parents but should be considered in determining the type and quantum of child support payable.
- [135] N.W.'s parents both had university degrees. J.W. deposed that they contributed monthly to the children's RESP while married. He deposed that they planned that the children would live rent free while attending school and have the RESP funds available to them. I presume that the latter was a plan to pay for the costs of the education from the RESPs. He also deposed that "it was always expected that the children would also work and contribute to their own education, just as the respondent and I had done for ourselves."
- [136] At the time that J.W. made his affidavit in July 2021, the balance of the RESP was \$30,837.
- [137] J.W.'s evidence persuades me that the pre-separation plans are consistent with the children remaining children of the marriage, with their subsistence costs covered by their parents, and their education costs covered by the RESP.
- [138] N.W. has not terminated their relationship with either parent. N.W.'s affidavit indicates that their views of their relationship with their father are more complicated and not as positive as his description of a bonded, close and living relationship. I do not consider that N.W.'s evidence is not consistent with some aspects of a close and loving relationship, but there are also aspects of their relationship, including years of difficulty after J.W. and J.F. separated, that N.W. believes were harmful to them and have not been overcome or addressed. It is clear that this remains an extremely significant obstacle in N.W.'s wellbeing

and one that they continue to work to overcome. Despite the difficulty, N.W. continues to want to have a relationship with their father and behaves accordingly.

- [139] Overall, the Farden factors support a finding that N.W. continues to be a child of the marriage. Slightly weighing against this finding is that N.W. has savings from their full time work and the ability to earn modest amounts part time. N.W. earned and saved that money with a plan in mind: to attend university. Only one year in, they have an impressive education and career plan that involves more than one degree, and possibly three. If they are able to pursue it, they do not expect that their parents will pay for the second or third degree. They will no doubt need that money. To require N.W. to use it now to support themselves may well preclude them from pursuing those further educational goals.
- [140] Accordingly, the Wesemann framework is applicable and the first step is satisfied with a finding that N.W. remains a child of the marriage. At the second step, J.W. challenges that s. 3(2)(a) support is appropriate and so the question on the third step is whether J.W. has met his burden to demonstrate that s. 3(2)(a) support is not appropriate.
- [141] Given N.W.'s detailed and lengthy education and career plans, it is not appropriate to require them to exhaust their savings. At present, assuming that J.W.'s income has not changed much since 2020, which is the latest information he has provided, child support for two children would amount to \$1,855 per month and for one child, \$1160. Assuming these amounts remained roughly stable through N.W.'s four year first degree, if the child support were reduced to one child, the assumption would be that N.W. would exhaust about \$34,000 of their savings providing for themselves.
- [142] N.W. also has the ability to contribute to their support through part time work over the summer, which would be about \$5,000 per year if they work half time at minimum wage. However, N.W. also contributes to their educational costs and some of their non-educational expenses. N.W. paid about \$2,400 in books, supplies and for a computer in first year. N.W. paid about \$2,500 towards extra-curricular exercise.
- [143] Eliminating s. 3(2)(a) child support while N.W. continues to contribute to their educational and non-education expenses, would use all of N.W.'s capacity to earn part time and seriously if not completely erode N.W.'s savings for their next degree or degrees.
- [144] However, N.W. does have significant savings in addition to the \$3,500 scholarship they earned on high school graduation and which they were able to access when they enrolled in university.
- [145] In my view, N.W. was able to contribute modestly to their monthly living costs once they started university, and knew how much savings they had to see them through their goals. I therefore conclude that s. 3(2)(a) child support is not appropriate but s. 3(2)(b) is.

- [146] Section 3 (2)(b) provides for the court to take into account the parents' means and the means of the child. On this application, I have detailed information about N.W.'s means but not up to date information for J.W. as he has not provided his 2021 or 2022 income tax information. I do not have J.F.'s recent income tax information but the evidence is that she has continued to support N.W. and K.W. as though child support has continued when it has not.
- [147] Given that J.W. unilaterally cut off child support, refused to provide updated financial information about his income and at the same time appending N.W.'s bank statements to an affidavit, I consider that only a very modest adjustment is appropriate. On the fourth step of the Wesemann framework I would reduce the child support for N.W. by \$100 per month from the table amounts for September 2022 forward.

Review of Status of the Children as Children of the Marriage

- [148] This issue is an evolving one for both K.W. and N.W. for different reasons.
- [149] K.W.'s health is still under investigation. One can hope for treatment that can make a difference in the short term which could improve the pace at which K.W. can attend university and/or their ability to work part time. One can hope that they will not experience more health problems but given their trajectory and long term struggles with mental health, that cannot be ruled out.
- [150] N.W. is on track to complete their first degree in May 2026.
- [151] While the children are on different tracks and have different matters affecting the timeframe and likelihood of ongoing dependency, they share an interest in an approach that minimizes, to the extent reasonable and fair to all concerned, of further court proceedings.
- [152] The first anticipated significant change supported by the evidence will be N.W.'s completion of their first degree which could occur as early as May 2026. I consider that to be in the medium term. Between now and then, it is possible there may be more clarity on K.W.'s health circumstances and educational progress. I consider June 2016 to be the earliest reasonable date for a review of basic child support for both K.W. and N.W.
- [153] Either party has leave to apply to the court for a determination of ongoing child support obligations no earlier than June 2026. The review at that time can take into account events between this application and that time but it may not occur before then.
- [154] The parties shall exchange financial information on annual basis on or before May 30 of each year to determine the annual child support owing.
- [155] At any time, the parties may agree to vary child support.

Calculation of Child Support Owing

- [156] The current order for child support is the order of Justice Warren made on May 16, 2019, which includes an order for annual exchange of financial information and review of child support and adjustment of child support "as necessary". At the time of the May 2019 order, K.W. resided with J.F. full time and N.W. was in a shared parenting arrangement. N.W. commenced residing full time with J.F. in July 2020.
- [157] The past child support claimed by J.F. includes basic child support for K.W. from July 2020 to March 2021, and basic child support for K.W. and N.W. to the present. In addition, J.F. claims that while J.W. was paying child support, he was inappropriately deducting amounts from child support for things like bus passes that he paid for up front.
- [158] In addition, there are disputes about historical s. 7 expenses and how the children's RESP should be applied to the costs of their post-secondary education.

Past Amounts Deducted by J.W. from Basic Child Support

- [159] J.W. deducted a total of \$454.20 from child support payments he was otherwise required to pay under the May 2019 order between August 2019 and June 2020. J.W. asserts that he did so, based on his evidence that J.F. did not appropriately pay for her share in the costs of certain things the children needed, such as bus passes, which he considered to be part of basic child support. Since he did not want to "put the children in the middle", he paid for them and then deducted them from the child support he paid to J.F.
- [160] This is not the purview of J.F. The law does not permit one parent to unilaterally dictate what the parent with whom the children are residing full time, or under a shared parenting regime, should or should not cover as child support. J.W. had options to address the concerns he had but one of them was not to appoint himself adjudicator of child support and unilaterally make deductions that he considered appropriate.
- [161] I order that J.W. pay J.F. \$454.50 in amounts owing for child support between August 2019 and June 2020.

Basic Child Support Not Paid

- [162] J.W. owes child support as follows:
- Child support for two children starting in July 2020 when N.W. moved to live with their mother full time until the next review in May 2021, to take into account updated financial information, was \$1,781 per month. J.W. paid \$1541.43 per month for July and August 2020 and then \$1113.20 per month from September 2020 to March 2021 and then stopped paying altogether. The shortfall for that "financial year" up to June 2021 is \$10,496.74.
 - For the period July 2021 to June 2022, J.W. should have paid \$1,855 per month. He paid nothing. The amount owing is \$22,260.

- c) The parties should have exchanged financial information in May 2022 for the period commencing July 2022 up to including June 2023. J.F. provided her 2021 income tax information but it was inadvertently not put into the record. J.W. did not provide his income tax information so the amounts he owes cannot be determined for that period. The amount J.W. owes in basic child support is to be determined.
- d) In May 2023, the parties should have disclosed their 2022 income tax information and determined the basic child support and s. 7 proportions for the period July 1, 2023 to June 2024. They have not done this. The amount J.W. owes in basic child support is to be determined.

[163] The amounts owing in basic child support from July 2020 through June 2022 are \$32,756.57.

[164] Within 15 days of this order, J.W. shall provide an updated F8 that includes his income tax returns, notices of assessment and any notices of reassessment for the 2021 and 2022 tax years. J.F. shall do the same by the same date for the 2022 tax year.

[165] The parties shall determine the amounts owing for basic child support between July 2022 and January 2024 in accordance with these reasons within 30 days of these reasons and enter a consent order. The calculations should take into account that the basic child support, according to the Guideline tables, should be reduced by \$100 per month starting in September 2022. This reduction reflects my finding that N.W. can contribute that amount to their maintenance starting at that time.

[166] If the parties cannot agree on the amounts owing, they make seek an appearance before me.

[167] J.W. shall pay the amounts determined to be owing once the determination has been made.

Section 7 Expenses

General S. 7 Expenses

[168] There is an ill-defined and ill-described dispute between the parties pertaining to s. 7 expenses. J.F. claims \$3,903.33 is unpaid s. 7 expenses between the end of 2020 and 2021.

[169] With the exception of how the RESP should be applied to educational costs, during oral argument there were very few references to evidence or law on this topic. J.W.'s objection to paying the outstanding s. 7 expenses does not seem to be that they were not incurred, but that the proper information was not supplied to FMEP or to him by FMEP.

[170] I was not assisted by any cogent submission on this issue during the application itself.

[171] In the circumstances, I am satisfied that J.F. incurred s. 7 expenses for which J.W. should have reimbursed J.F. in the amount of \$3,903.33. J.W. shall pay that amount to J.F.

[172] J.W. applies for an order on how medical expenses should be handled taking into account the parties' insurance coverage. The May 2019 order appends and incorporates a parenting plan that provides for how s. 7 expenses should be handled. Neither party asked me to vary that order. I decline to do so.

RESP

[173] Post-secondary education expenses were not addressed in the May 2019 order. They now feature centrally and submissions were made on this issue.

[174] The parties started a RESP for the children. J.W. has paid some of their university expenses from it. He submits that is all he is required to pay for child support. I have rejected that proposition, but there remains a question as to whether the RESP should be used to pay for all of the children's university expenses or only J.W.'s proportion of them.

[175] J.W. submits it is the latter because his father "seeded" the RESP and J.W. is the only person who ever contributed to the RESP, before or after separation.

[176] The problem with that submission is that I must start with the assumption that before separation, the contributions made by J.W. or J.F. were made with family assets and therefore were presumptively equal contributions. That assumption is supported by J.F.'s evidence that the RESP funds were primarily accumulated by J.W. and J.F. during the marriage.

[177] J.W. received the RESP as a result of the parties' negotiations on asset distribution. The evidence includes an email that purports to append the agreement the parties reached but the attachment is not included. There is another email communication from a mediator that addresses how post separation contributions to the RESP will be addressed. There is no evidence as to whether the RESP went to J.W. as part of his share of family assets or as a practical matter because someone had to hold the funds which would be applied to the children's education costs. The parenting agreement appended to the May 2019 order does not address this matter although it does address s. 7 matters generally.

[178] There is no evidence as to how much money was put in by whom at what times. There is no evidence as to the quantum of "seeding" that J.W. asserts his father made. There is no evidence as to how much the value of the RESP, approximately \$31,000 in 2021, is attributable to contributions by the government and investment income as opposed to contributions by the parties themselves.

[179] Presumably, the children are the beneficiaries of the RESP. Often in caselaw, RESPs are spoken of as being essentially the property of the children. See for example *Parton v. Moro*, 2015 BCSC 2250 at paras. 27, 29. The parent on the account is referred to as simply having "authority over" the account, and not owning the account: *Parton* at paras. 35-36. Sometimes the wording used is that of "holding the RESP in trust": *J.B.D.K. v T.A.B.*, 2018 BCSC 1377 at para. 43.

[180] In the absence of detailed evidence or helpful submissions on this issue, the most appropriate characterization of the RESP is that it contains funds put aside for the purpose of the children's post secondary education and not the money of one party or the other. The RESP funds should be used for the children's post secondary education until it is exhausted. If it is exhausted before both children graduate from their first degrees, their tuition shall be a s. 7 expense to which both should contribute in proportion to their incomes.

[181] The children are responsible for their textbooks and school supplies.

Disposition

[182] K.W. has never ceased to be a child of the marriage and remains a child of the marriage.

[183] N.W. has never ceased to be a child of the marriage and remains a child of the marriage.

[184] J.W. shall pay J.F. \$454.50 in amounts inappropriately deducted by him for his basic child support obligations between August 2019 and June 2020.

[185] J.W. shall pay J.F. \$32,756.57 in basic child support for the period July 2020 through June 2022.

[186] Within 15 days of this order, J.W. shall provide an updated F8 that includes his income tax returns, notices of assessment and any notices of reassessment for the 2021 and 2022 tax years. J.F. shall do the same by the same date for the 2022 tax year.

[187] Within 30 days of these reasons, the parties shall determine the amounts owing for basic child support between July 2022 and January 2024 in accordance with these reasons and the income tax information they have exchanged. If the parties cannot agree on the amounts owing, they make seek an appearance before me. J.W. shall pay the amounts determined to be owing once the determination has been made.

[188] Either party may apply to the court to review the status of either child as a child of the marriage and child support no earlier than June 1, 2026. Any such review may take into account, and be sought to apply to events between the date of this order and June 1, 2026 but may not be brought before June 1, 2026.

[189] J.W. shall reimburse J.F. \$3,903.33 for s. 7 expenses.

[190] The RESP shall be used to pay the post secondary tuition fees of the children until it is exhausted. Thereafter, the parties shall pay the tuition fees for the children's first degrees in proportion to the parties' income.

[191] The children shall continue to contribute to their education expenses by paying for textbooks and supplies.

"Matthews J."

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