

CANADA / JUDGMENT

J.L.H. v. D.A.D.H.

2024 BCSC 2336

COURT

Supreme Court of British Columbia

DECIDED

28 November 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2336 J.L.H. v. D.A.D.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.L.H. v. D.A.D.H.,

2024 BCSC 2336

Date: 20241128

Docket: 19088

Registry: Smithers

Between:

J.L.H. aka J.L.W.

Claimant

And

D.A.D.H.

Respondent

Before: The Honourable Madam Justice Sukstorf

Oral Reasons for Judgment

Counsel for the Claimant:

David Milojkovic

Counsel for Respondent:

No Appearance

Place and Date of Hearing:

Smithers, B.C.

November 25, 2024

Place and Date of Judgment:

Smithers, B.C.

November 28, 2024

Table of Contents

Background.. 3

Facts. 3

Issues. 4

Legal Authority. 4

Is this matter one that can be decided at Summary Trial?. 4

Analysis of Issues. 6

Is this matter one that can be decided at Summary Trial?. 6

Can a Divorce be granted for Claimant at this time?. 8

Analysis of Urgent Matters. 8

What Parenting Arrangements are appropriate?. 8

How much Child Support is payable?. 9

Imputation of Income. 10

Incomes of the Parties. 11

Child Support Payable. 11

Special Expenses. 13

Spousal Support 14

Is the claimant entitled to spousal support and if so, how much?. 16

Analysis. 16

Determination of Spousal Support 17

Retroactive Spousal Support 18

Property Division/Outstanding Property Issues. 19

FFR and Pensions. 19

Unresolved Matters will be deferred without Prejudice. 20

Disposition.. 20

Background

- [1] This case concerns a claimant who seeks a divorce as well as court orders to solidify the current parenting arrangement and to address several unresolved support and property issues that have flowed from the breakdown of the marriage.

Facts

- [2] The parties began to live together in a marriage-like relationship on September 21, 2009, were married on March 23, 2011 at Burns Lake, BC and later separated on August 4, 2022.
- [3] There is one child of the marriage, namely P.C.H. ("The Child") born July 27, 2011.
- [4] The claimant filed a notice of family claim on May 16, 2023, which was served on the respondent on July 12, 2023.
- [5] A Judicial Case Conference ("JCC") was held on September 11, 2024 and the only order that was made was to release the parties from the JCC.
- [6] The respondent was duly served regarding the notice of family claim and has not filed a response or participated in the litigation despite requests and letters from claimant's counsel. He did, however, try to attend the JCC virtually by Teams, but due to an inadvertent error, he was not admitted.
- [7] The respondent left the family home at 540 9th Avenue, Burns Lake, BC V0J 1E0 on August 4, 2022, and has not seen or requested to see the Child since that time. The claimant has also had very little contact with him.
- [8] The Child has informed the claimant that he has no desire to communicate with the respondent so there have been no efforts made to facilitate reconciliation.
- [9] The Former Family Residence ("FFR") on 9th Avenue is currently in foreclosure and neither party has been able to redeem its indebtedness. Although the claimant had been living in the home, she will need to relocate with the Child and find a new home as soon as it is sold.
- [10] At the time of filing, the claimant was employed in an administrative role with the Lake Babine Nation with an annual income of approximately \$31,126.00.
- [11] However, in his submissions, counsel advised the court that just prior to the proceedings, the claimant was laid off so she is currently unemployed and searching for new employment.

[12] The claimant resides in Burns Lake and the respondent resides in Kitwanga with a new partner.

Issues

[13] The first issue for determination is whether the matter could proceed as a summary trial. The respondent failed to appear, and no representative appeared on his behalf.

[14] Given the circumstances, the court prioritized addressing the urgent issues of child and spousal support to ensure that the claimant's immediate needs were met.

Legal Authority

Is this matter one that can be decided at Summary Trial?

[15] Summary trial is governed by rule 9-7(15) of the Supreme Court Civil Rules, which says that a court may grant judgment on hearing a summary trial application unless the court is "unable" to find the facts necessary to decide the issues of fact or law, or it would be unjust to decide the issues summarily (*Gichuru v. Pallai*, 2013 BCCA 60 at para. 34). The court is entitled to make findings of fact on affidavit evidence so long as it is not unjust to do so, even if there are disputed issues of fact (*Gichuru* at para. 30).

[16] The test to be applied to determine if a matter is suitable for summary trial is set out in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (B.C.C.A.) [*Inspiration Management*]. In short, the test is two-fold:

- a) first, the court must be satisfied that it can find the necessary facts to determine the case summarily;
- b) second, the court must be satisfied that it is just to decide the case summarily. These are separate but related questions. If the court cannot find the necessary facts, the application is dismissed. If the court can find the necessary facts, the application will be allowed only if the court also considers it is just to do so.

[17] It is well established that upon an application for a summary trial, the parties must put their best foot forward, meaning, they must take every reasonable step to put themselves in the best position possible. A respondent to a summary trial application cannot simply insist on a full trial in the hope that something might turn up.

[18] Although the parties are required to put their best foot forward, gaps in the evidence can nevertheless render a matter unsuitable for summary trial.

[19] Conflicting affidavits on a summary trial may render a matter unsuitable for summary trial. The court should not decide an issue on a summary trial solely based on preferring one conflicting affidavit over the other but may decide the issue where there is other admissible evidence or some other basis for preferring one affidavit over another.

- [20] Similarly, issues of credibility may also render a matter unsuitable for summary trial but not always. In appropriate circumstances, credibility findings can be made on a summary trial.
- [21] The case law has identified a non-exhaustive list of factors to consider in determining whether a matter is suitable for summary trial. Some of the factors appear to go to the first part of the test, some go to the second part of the test, and some overlap. The factors include:
- a) the amount involved;
 - b) the complexity of the matter;
 - c) the urgency of the matter and any prejudice likely to arise from delay;
 - d) the cost of taking the matter forward to a conventional trial in relation to the amount involved (i.e. proportionality);
 - e) the course of the proceedings and whether the evidence presented is sufficient to resolve the dispute;
 - f) the cost of the litigation and the time of the summary trial;
 - g) whether credibility is a critical factor in the determination of the dispute;
 - h) whether the summary trial may create an unnecessary complexity in the resolution of the dispute;
 - i) whether the application would result in litigating in slices; and
 - j) any other factors that affect the justice of deciding the case summarily.

Analysis of Issues

Is this matter one that can be decided at Summary Trial?

- [22] The court finds that this matter is appropriately suited for a summary trial, given the circumstances and the evidence presented. The claimant has provided the court with sufficient disclosure, including a detailed Form F8 Financial Statement, supported by her tax returns and notices of assessment for 2020 through 2022. She has also submitted affidavits outlining her care for the Child and other relevant facts regarding the relationship. This evidentiary record adequately addresses the issues before the court and supports proceeding by way of summary trial.
- [23] The claimant argues, and the court agrees, that she should not be precluded from pursuing a summary trial simply because the respondent has failed to participate or provide additional evidence. Despite being properly served with the notice of family claim on July 12, 2023, the respondent has not filed a response. Moreover, efforts to engage him, including a settlement offer sent on September 16, 2024, with a response deadline of October 7, 2024, have been entirely ignored. The respondent's continued lack of engagement makes it unlikely that the

evidentiary record would be improved by a conventional trial.

- [24] The claimant has further demonstrated that there is urgency in resolving this matter. She is currently residing in the family home, which will soon be foreclosed on, necessitating her relocation. She has not received any child or spousal support since the separation over two years ago, leaving her in a precarious financial position that will only worsen if support is delayed further. Forcing her to endure the significant costs and extended timeline of a conventional trial would impose an undue financial and emotional burden, which is neither reasonable nor equitable.
- [25] Additionally, the issues before the court are not overly complex and rely on largely uncontested facts. The claimant has been the primary caregiver for the Child since August 4, 2022, and has provided reliable financial information for calculating support payments. The limited property in dispute does not justify the time and expense of a full trial, particularly considering the respondent's lack of participation.
- [26] Given the straightforward nature of the issues, the adequacy of the evidentiary record, the urgency of the claimant's situation, and the respondent's continued non-engagement, proceeding by way of summary trial is both just and efficient. Requiring the claimant to pursue a conventional trial under these circumstances would be contrary to the principles of fairness and proportionality.
- [27] This decision focuses on addressing the most urgent matters raised by claimant's broad claim for relief, namely, the requests for child and spousal support, given their immediate financial impact on the claimant and the Child. At the same time, other matters outlined in the claimant's notice of civil claim cannot be fully addressed at this stage due to insufficient evidence. However, the outstanding issues do not require a full trial and can be resolved through additional filings or submissions.
- [28] Examples of these outstanding matters include the filing for divorce, claims for special expenses, and a subsequent name change. Similarly, the division of property and pensions will require further disclosure and evidence to allow for a fair and comprehensive determination. Resolving the urgent financial issues now ensures that the claimant's immediate needs are met, without prejudicing the parties' ability to address the remaining matters once the necessary information is provided.

Can a Divorce be granted for Claimant at this time?

- [29] The parties have been separated for well over two years, and there is no prospect of reconciliation. In this application, the claimant seeks a divorce, relying on adultery as the basis of her claim. While adultery may have been the cause of the breakdown of the marriage, before a court can grant a divorce on this basis there is an evidentiary requirement to substantiate the claim, which is absent in this case.

- [30] Additionally, based on the evidence currently before the court, I cannot grant the divorce order until all statutory requirements for a divorce filing have been satisfied. This includes the submission of a clearance certificate from Ottawa and confirmation that the registrar is in a position to issue a certificate of pleadings.
- [31] Consequently, the application for divorce is adjourned generally. The claimant is invited to reset the application before me or, alternatively, file for a Desk Divorce once all requirements have been met, including the issuance of a clearance certificate and a certificate of pleadings.

Analysis of Urgent Matters

What Parenting Arrangements are appropriate?

- [32] The sole consideration in deciding parenting arrangements is the best interests of the children, taking into account all of their needs and circumstances, including the factors prescribed by s. 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [33] In determining parenting time and responsibilities, I have considered only what is in the best interests of the Child, with reference to the factors set out in ss. 37 of the FLA. Based on the evidence and the reasons outlined below, I find that it is in the Child's best interests for him to continue residing primarily with the claimant, who shall have primary parenting time and sole decision-making responsibility under ss. 41 and 42 of the FLA. This includes the exclusive authority to make all significant decisions concerning the Child's health, education, and overall well-being.
- [34] Since leaving the family residence on August 4, 2022, the evidence indicates that the respondent has had no contact with the Child and has not demonstrated any interest in maintaining or re-establishing a relationship with him.
- [35] Nevertheless, I am of the view that it is in the Child's best interests to maintain flexibility to encourage reconciliation with his father. Accordingly, the respondent shall be afforded reasonable parenting time at dates and times mutually agreed upon by both parents.

How much Child Support is payable?

- [36] Child support is a legal right of the child, intended to provide financial support that, to the extent possible, maintains the standard of living the child enjoyed prior to the separation. This principle recognizes that children should not disproportionately bear the economic consequences of their parents' relationship breakdown.
- [37] The amount of child support owed is determined based on the payor parent's income, reflecting their ability to contribute to the child's financial needs. Importantly, child support is not restricted to covering the necessities of life but is intended to ensure the child's overall well-being and standard of living.

- [38] The respondent has made only a single payment of \$2,310 to the claimant, without specifying whether it was for child or spousal support. Beyond this one-time payment, the respondent has failed to provide any further financial assistance, leaving the claimant solely responsible for the child's financial needs.
- [39] Regrettably, the respondent, has not responded to the notice of claim and has failed to provide the financial disclosure required to determine his income since the separation.
- [40] The evidence before the court establishes that the respondent is employed as a welding supervisor at Mt. Milligan Mine. According to the respondent's 2021 notice of assessment, his annual income was reported as \$149,134. This information provides a baseline for evaluating his financial obligations.
- [41] In the absence of updated financial disclosure, it is reasonable to infer that the respondent continues to work in the same position or has advanced to a higher one, potentially earning more than his 2021 reported income. However, for the purpose of determining child and spousal support obligations, the claimant has requested that the court impute the respondent's annual income at \$149,134. This figure reflects the most reliable evidence available to the claimant and ensures a fair assessment of the respondent's financial responsibilities.

Imputation of Income

- [42] The principles relating to imputation of income were reviewed by Justice Griffin, in *Zilic v. Zilic*, 2021 BCCA 107.
- [43] In short, the imputation of income is a discretionary decision guided by the principle of reasonableness, considering the parties' actual capacity to earn income considering their specific circumstances. The burden of proof lies on the party seeking to have income imputed, requiring them to establish an evidentiary basis for such a finding. In this case, the claimant has provided copies of the respondent's 2021 notice of assessment.
- [44] Courts assess reasonableness by considering factors such as the individual's age, education, physical and mental health, work history, and the availability of work, which also encompasses childcare responsibilities. A spouse's capacity to earn income includes their ability to work or to be retrained for suitable employment. These principles apply to both child and spousal support, although the legal basis for each differs. For spousal support, particularly in non-compensatory claims, the analysis also considers the marital standard of living and the claimant's means, including all sources of income and capital. These factors collectively ensure that imputing income reflects the realities of the parties' circumstances while meeting the objectives of support orders.

Incomes of the Parties

- [45] Based on the evidence presented, I find it reasonable to impute an annual income of \$149,134 to the respondent. This figure is derived from his 2021 notice of assessment, which is the last available and reflects his continued employment as a welding supervisor, with no evidence suggesting a material change in his earning capacity.
- [46] Regarding the claimant, her financial disclosure indicates that she earned \$31,126 in 2023 in an administrative role at the time of filing.
- [47] For the purposes of calculating the claimant's income under the Federal Child Support Guidelines and the Spousal Support Advisory Guidelines [SSAG], I find it reasonable to impute an income commensurate with her previous earnings of \$31,126. I note that the claimant's salary was tax-exempt as a Status Indian. Since the Guidelines are applied equitably and presume taxable income, the DivorceMate software will automatically gross up the claimant's non-taxable income to align it with taxable income for the purpose of calculating the appropriate monthly payments.
- [48] To ensure that the parties have the opportunity to readjust child support as necessary, they shall exchange their respective tax returns, along with notices of assessment or reassessment, by June 1st of each year, commencing in June 2025. This obligation shall continue annually for as long as the Child remains eligible to receive child support.

Child Support Payable

- [49] I find that pursuant to the Divorce Act, (R.S.C., 1985, c. 3 (2nd Supp.)) [DA] based on this imputed income, the respondent must pay the claimant, the sum of \$1,349 per month for the support of The Child, payable on the 15th day of each month commencing August 15, 2022, and continuing for so long as the Child is a child of the marriage as defined in the DA.
- [50] Based on the retroactive period, the claimant is entitled to \$37,772 in retroactive child support. However, as the purpose of the \$2,310 payment made to the claimant remains unclear, I find it fair to apply it to the child support and reduce the retroactive child support owing to \$35,462.
- [51] It is important to note that retroactive child support awards are not truly retroactive; rather, they ensure that payors fulfill their existing legal obligations to provide support. These awards are not restricted to exceptional circumstances but are grounded in the payor's ongoing duty to meet their financial responsibilities to the child.
- [52] In determining this award, I have considered all the evidence, including the delay of over two years since the parties' separation. I did consider the reasons for this delay and its impact on the retroactive child support claim. However, I note that claimant filed her notice of family claim on May 16, 2023, approximately nine months after the parties' separation. She explained that the delay in initiating proceedings was due to the significant time it took to retain legal counsel, a challenge she attributed to her limited financial resources and the

geographic location in which she resides.

- [53] In the absence of any information regarding respondent's current financial arrangements, I am unable to assess whether this retroactive award will cause him significant hardship. However, after weighing all the evidence, I find that it is in the Child's best interests for the retroactive amount owing to be paid forthwith. This conclusion is influenced by the evidence of the claimant's current financial difficulties, including the impending loss of the only home the Child has ever known, which underscores the urgency of addressing his financial needs. The primary consideration is ensuring that the Child's financial requirements are met and that he benefits from the payor's actual income level during the relevant period. The court must prioritize the Child's well-being above all other considerations in this matter.

Special Expenses

- [54] The claimant has also requested a determination that certain categories of expenses be designated as section 7 "special or extraordinary" expenses under the Federal Child Support Guidelines with respect to the Child. These categories include:
- (a) child care expenses incurred as a result of employment, illness, disability, or education or training for employment by the parent with the majority of parenting time;
 - (b) the portion of medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses exceeding insurance reimbursement by at least \$100 annually, such as orthodontic treatment, professional counselling, physiotherapy, occupational therapy, speech therapy, prescription drugs, hearing aids, glasses, and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or other educational programs that meet the child's specific needs;
 - (e) expenses for post-secondary education;
 - (f) extraordinary expenses for extracurricular activities; and
 - (g) any other activities mutually agreed upon by the parties in writing.
- [55] I decline to issue a general order approving these broad categories as section 7 expenses. It is more appropriate to assess section 7 expenses on an item-by-item basis, rather than making determinations regarding entire categories in advance.
- [56] To the extent that the claimant has identified specific current expenses, there is no evidence to suggest that the Child's participation in extracurricular activities exceeds what is ordinary or typical.

- [57] For any section 7 expenses that arise in the future, the parties shall share those expenses in proportion to their respective incomes, with the respondent being responsible for 72% of the expenses and the claimant being responsible for 28%. Before incurring a section 7 expense, the party intending to claim the expense must notify the other party and seek their consent.
- [58] To facilitate reimbursement, the party who incurs a section 7 expense must provide the other party with a request for reimbursement along with supporting documentation, such as payment receipts, as soon as practicable after the expense is incurred. The responsible party shall reimburse their proportionate share of the expense within 14 days of receiving the request and supporting documentation.
- [59] The parties are, of course, free to agree to share the costs of extracurricular activities that do not qualify as section 7 expenses. I encourage both parties to maintain open and respectful communication on this matter. However, they must also remain realistic about the financial consequences of separation, including the costs of maintaining two households, and ensure that any decisions regarding extracurricular activities are reasonable and sustainable for the child.

Spousal Support

- [60] Spousal support orders may be made under either the FLA or the DA. The objectives and factors that must be considered for spousal support mirror each other in both legislations (*Li v. Liu*, 2014 BCSC 1110). However, it is important to specify which legislation the order is being made under for the purpose of future variation and review applications.
- [61] In her notice of application, the claimant requested spousal support pursuant to the DA.
- [62] Claims for spousal support under the DA are governed by Section 15.2, which outlines both the objectives of spousal support and the factors the court must consider in determining entitlement, amount, and duration. This section provides the framework for assessing spousal support claims, ensuring that decisions are guided by principles such as the recognition of economic disadvantages arising from the marriage, financial need, and the goal of achieving self-sufficiency where appropriate.
- [63] According to the statutory provisions and case law, the Supreme Court of Canada has recognized three bases for entitlement to spousal support: (1) compensatory support, which aligns primarily with the first two objectives of the DA; (2) non-compensatory support, which corresponds mainly to the third and fourth objectives; and (3) contractual support (see *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 at paras. 15, 41-42, 44 R.F.L. (4th) 1).
- [64] In considering the claimant's request the matters for my determination are:
- a) whether the claimant qualifies for spousal support on compensatory or non-compensatory grounds, or both;

- b) if entitlement is established, determining the appropriate quantum and duration of the support.
- [65] Compensatory spousal support is intended to address the economic disadvantages or benefits that arise from a marriage or its breakdown. Rather than calculating exact losses, courts look to the legal guidelines and prior decisions to understand what compensation is fair. In *Chutter v. Chutter*, 2008 BCCA 507, Justice Rowles explained that compensatory support seeks to balance the economic disadvantages one spouse faces, like reduced career opportunities, when taking on family responsibilities. This support also recognizes that the other spouse may have gained advantages due to these sacrifices (*Bracklow v. Bracklow*, [1999] 1 S.C.R. 420). For example, in *Moge v. Moge*, [1992] 3 S.C.R. 813, the court observed that when one spouse sacrifices career growth to care for children, their earning potential and future financial security are at risk. The support aims to address this economic loss (*Moge* at 867-868).
- [66] The standard of living enjoyed during the marriage is also important. The longer the relationship, the more both lives become economically intertwined. Courts in British Columbia, such as in *W. v. W.*, 2005 BCSC 1010, have interpreted the principles from *Moge* to mean that after long marriages, a spouse may be entitled to support that provides a roughly equivalent standard of living (*Martinson J. W. v. W.* at para. 11). Additionally, economic disadvantage from the marriage does not exclude a spouse from support even if they worked outside the home, as marriage often limits career progress regardless of employment (*Chutter* at para. 71).
- [67] Non-compensatory, or needs-based, support addresses financial need, emphasizing the joint nature of marriage and the responsibility to support a spouse in need after separation. This approach views "need" in relative terms, beyond just basic necessities, and looks at the lifestyle the couple shared (*Chutter* at para. 55; *Bracklow*, at para. 43).
- [68] In making the determination of how much spousal support should be awarded, trial judges are guided by the SSAG, which provide formula ranges based on the spouses' incomes, as calculated under the Federal Child Support Guidelines, SOR/97-175. Adjustments may be necessary, recognizing that the SSAG is not law but a helpful tool.
- [69] The SSAG operates on the assumption that entitlement has already been established. The basis for entitlement is crucial, not only as a threshold issue but also to determine the proper placement within the SSAG ranges, or to justify deviation from them under exceptional circumstances, as noted in SSAG s. 3.2.2. Understanding the basis of entitlement is necessary for determining the amount and duration of support, per SSAG s. 4.2.

Is the claimant entitled to spousal support and if so, how much?

Analysis

- [70] The parties cohabited for nearly 13 years, during which the claimant undertook most of the household responsibilities. Following the birth of the Child, she assumed primary childcare duties, often at the expense of her career advancement.
- [71] Since the separation, the claimant has continued as the Child's primary caregiver, a role she is expected to maintain based on the evidence presented. This highlights her significant caregiving contributions and underscores the respondent's obligation to provide consistent and adequate financial support.
- [72] Now a single parent, the claimant was employed in a low-paying administrative position at the time of filing--which she argues is work below her potential had she been able to focus on her career development during the relationship.
- [73] Based on the evidence and after applying the above legal principles, for the reasons that follow, I find that the claimant is entitled to spousal support on both compensatory and non-compensatory grounds.
- [74] As discussed above, compensatory spousal support seeks to address the economic disadvantages arising from sacrifices made during the marriage. Although the claimant did not completely leave the workforce, her role in supporting the family, providing stability while the respondent worked away from the home every second week, and serving as the primary caregiver to the Child likely curtailed her employment opportunities and overall financial growth. These circumstances justify compensation for her diminished earning capacity. Case law, including *Moge* and *Chutter*, affirms that compensatory spousal support is warranted for contributions made to a spouse's success, even where those contributions are indirect, such as fostering a stable home environment that enabled the other spouse to pursue their career.
- [75] From a non-compensatory (needs-based) perspective, given the claimant's role as a single parent, she has increased responsibilities that reduces her earning potential which makes her support need more apparent. With the pending loss of their home, and now being laid off from her own work, she faces a significant decline in her standard of living post-separation. The SSAG encourages consideration of the marital standard of living and whether the recipient can maintain a similar lifestyle.

Determination of Spousal Support

- [76] There is one child of the marriage, born on July 27, 2011. The parties were together for 13 years, during which the claimant was employed for all but two years when she initially stayed home to care for the Child after his birth.
- [77] For the reasons that follow, I find that the claimant should receive mid-range spousal support of \$1,683/month (\$20,196/year) for a period of 10 years. The claimant is entitled to spousal support on both compensatory and non-compensatory grounds. I find that this mid

range accommodates the economic disadvantages arising from the claimant's role as the primary caregiver and homemaker during the marriage, while also ensuring her financial stability as a single parent, particularly given the disparity in incomes and her limited earning capacity compared to the payor.

- [78] For a 13-year marriage, the SSAG suggest support duration between 6.5 and 13 years. Mid-range support of \$1,683/month for 10 years is appropriate, reflecting the marriage's length, the claimant's partial self-sufficiency, and the payor's financial ability.

Retroactive Spousal Support

- [79] In determining whether to award retroactive spousal support, I have considered the claimant's entitlement, the delay in bringing the application, the respondent's conduct, and the potential hardship of such an award. While the claimant is entitled to spousal support due to the economic disadvantages she has faced since the relationship's breakdown, the practical implications of a retroactive award must also be weighed.
- [80] The respondent has been ordered to pay retroactive child support of \$35,462, reflecting the child's right to financial support, to be prioritized in *D.B.S. v. S.R.G.*, 2006 SCC 37. I find that requiring payment of both retroactive spousal and child support simultaneously would likely impose undue financial hardship, jeopardizing the respondent's ability to meet future obligations and undermine the claimant's long-term financial stability.
- [81] Given these considerations, a retroactive spousal support award is not appropriate. Instead, the claimant's entitlement is better addressed through her receipt of ongoing future payments, ensuring sustainable support while minimizing the risk of undue burden on the respondent.
- [82] I find that based on the circumstances of this case, the respondent's failure to provide spousal support and the necessary financial assistance with respect to the FFR over the past two years has created financial inequities that can be more effectively addressed through an unequal division of family property under section 95 of the FLA. This approach compensates for the claimant's economic disadvantage by redressing the disproportionate burden caused by the respondent's lack of financial contribution during a critical period.
- [83] In conclusion, I find that the claimant's entitlement to compensation is best met through a combination of ongoing spousal support and an unequal division of family property, which has yet to be determined, balancing fairness with practicality and prioritizing the sustainability of future support.

Property Division/Outstanding Property Issues

- [84] Aside from the mortgages registered against the family residence, there is no significant family debt. The property available for division is limited, and there does not appear to be any genuine dispute regarding the remaining property.

[85] While there is limited family property at issue, the court must defer rendering a decision on these matters due to insufficient information for the following reasons.

FFR and Pensions

- [86] The claimant suggests that the respondent holds a substantial pension with his employer, Centerra Gold Services Inc., but she has not provided specific details about its nature. It remains unclear whether she is referring to a defined benefit plan, a defined contribution plan, or a Group Registered Retirement Savings Plan (RRSP).
- [87] The respondent's 2021 tax return shows no RRSP contributions for that year and indicates an available RRSP deduction room of \$264,253. This suggests that he may not regularly contribute to his individual RRSP. However, the Pension Adjustment of \$10,057 reflects the value of contributions or accrued benefits from his likely participation in his employer-sponsored pension plan during the previous year.
- [88] However, key details regarding the respondent's pension or Group RRSP, including their nature, value, and division, remain unavailable. Additionally, the FFR is currently in foreclosure. Although there is some indication that there will be residual equity available to the parties after its sale, the timing and amount of any proceeds are uncertain.
- [89] Without a clear understanding of the pensions and the proceeds from the FFR, the court cannot make an informed and equitable determination regarding the division of family property. Both parties are required under s. 5 of the FLA to provide full and frank financial disclosure to ensure all relevant assets are accounted for. If an unequal division of assets under s. 95 is to be considered, these disclosures are essential. Accordingly, a decision on these matters is deferred until the requisite information is provided.

Unresolved Matters will be deferred without Prejudice

- [90] The court emphasizes that deferring these decisions will not prejudice either party. Once the necessary financial disclosures are provided and the FFR proceeds are determined, these property matters can be resolved fairly. Subject to additional submissions by the parties, I find that any inequities stemming from the respondent's failure to provide financial support during the separation period may also be addressed through an unequal division of family property under section 95 of the FLA. This approach ensures that urgent financial issues are resolved now, while outstanding property matters are addressed comprehensively at a later stage. Consequently, the property issues will be adjourned generally.

Disposition

- [91] For these reasons, I order as follows:

1. Parenting Arrangements

o Primary Residence and Decision-Making Responsibility:

The claimant shall have primary parenting time and sole decision-making responsibility for the Child, including the exclusive authority to make all significant decisions concerning his health, education, and overall well-being.

o Parenting Time for the respondent:

The respondent shall have reasonable parenting time at dates and times mutually agreed upon by both parents.

2. Child Support

o Ongoing Child Support:

The respondent shall pay child support to the claimant in the amount of \$1,349 per month, payable on the 15th day of each month, commencing retroactively from August 15, 2022, and continuing for as long as the Child is a child of the marriage under the DA.

o Retroactive Child Support:

The respondent shall pay retroactive child support in the amount of \$35,462, covering the period from August 15, 2022, to November 15, 2024.

o Tax Returns and Disclosure:

Both parties shall exchange their tax returns and notices of assessment or reassessment annually by June 1, commencing in 2025, for as long as the Child is eligible to receive child support.

3. Section 7 Expenses

o The parties shall share any future Section 7 expenses for the Child in proportion to their respective incomes, with the respondent responsible for 72% and the claimant responsible for 28%.

o Before incurring a Section 7 expense, the party intending to claim it must notify the other party and seek consent.

o Reimbursement for Section 7 expenses must be supported by receipts and shall be made within 14 days of the request.

4. Spousal Support

o Ongoing Spousal Support:

The respondent shall pay spousal support to the claimant in the amount of \$1,683 per month, payable on the first day of each month, commencing from December 1, 2024, and continuing for a period of 10 years.

o Retroactive Spousal Support:

No retroactive spousal support is awarded at this time. The court is of the view that subject to submissions by the parties, financial inequities stemming from the respondent's failure to provide spousal support during the separation may be addressed through the division of family property.

5. Disclosure Requirements

o By February 15, 2025, both parties shall provide to each other full disclosure of their respective pensions and/or Group Registered Retirement Savings Plans (RRSPs), including:

§ Current balance.

§ Contribution history.

§ Any applicable employer matching contributions.

6. Disposition of the Former Family Residence (FFR)

o Upon the sale of the FFR, the net proceeds shall be held in trust by counsel for the claimant pending further court orders or a settlement agreement between the parties.

o The parties shall provide any necessary information to facilitate the sale and resolution of outstanding liabilities on the property.

7. Deferred Property Division

o The division of family property, including the respondent's pension or RRSP, and the proceeds from the sale of the FFR, is deferred and adjourned generally until sufficient financial disclosure has been provided by both parties and there is some resolution regarding the FFR.

o The court reserves the claimant's right to seek an unequal division of family property under s. 95 of the FLA if warranted by the respondent's conduct and the resulting financial inequities.

"Sukstorf J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/23/2024BCSC2336.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/j-l-h-v-d-a-d-h-2024>

Prepared on 28 October 2026 · Esheria