

CANADA / JUDGMENT

J.L.M. v. G.G.M.

2024 BCSC 999

COURT

Supreme Court of British Columbia

DECIDED

10 June 2024

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

2024 BCSC 999 J.L.M. v. G.G.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.L.M. v. G.G.M., 2024 BCSC 999 Date: 20240610 Docket: E128404 Registry: Kelowna Between: J.L.M. Claimant And G.G.M. Respondent Before: The Honourable Justice Hardwick Reasons for Judgment Re Financial Matters Counsel for the Claimant: G. Miller Counsel for the Respondent: H.A. Taylor A. Mawko Place and Date of Trial/Hearing: Kelowna, B.C. June 5 - 9; 12 - 15; 19 - 23; July 18 - 21; September 11 - 12; October 5, and 11 - 12, 2023 Place and Date of Judgment: Kelowna, B.C. June 10, 2024 Table of Contents Overview.. 3 Gord's Income Information. 5 Jane's Income Information. 6 Determination of Guideline Income Analysis. 8 Guideline Income Conclusions. 12 Child Support: Ongoing and Retroactive. 13 Legal Overview.. 13 Prospective and Partial Retroactive Support 15 Review of Basic Child Support 15 Retroactive Child Support prior to Conclusion of Trial 16 Section 7 Expenses. 17 Costs. 29 Form of Order and Seizure. 30 Overview

- [1] These are the companion reasons to my prior set of reasons for judgment indexed at 2024 BCSC 908, on the issue of parenting time, allocation of parenting responsibilities and ancillary parenting orders (the "Parenting Reasons").
- [2] These reasons for judgment address support issues including, inter alia, determination of Guideline income pursuant to the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines") and special and extraordinary expenses.
- [3] As set out in the Parenting Reasons:
- The claimant, J.L.M. ("Jane") was born April 24, 1980 and is 44 years old;
 - The respondent, G.G.M. ("Gord") was born March 15, 1979 and is 45 years old;
 - The parties' daughter MJM was born June 2012 (thus very soon to turn 12 years of age); and
 - The parties' son was MGM, born May 2015 (9 years old as of the date of these reasons).
- [4] From the date of separation on June 21, 2020, the Children, as they are defined in the Parenting Reasons, have resided primarily with Jane.
- [5] Gord did subsequently receive parenting time pursuant to an Interim Interim Agreement (as defined in the Parenting Reasons) and two subsequent court orders.

- [6] Gord's parenting time has been further increased quite significantly on certain specified terms set forth in my orders made following the Parenting Reasons. However, Jane continues to have primary residence of the Children and thus s. 9 of the Guidelines is not engaged.
- [7] Jane, who has a Master's Degree, previously worked for her parent's company (defined in the Parenting Reasons as "Parent Co") and was responsible for bookkeeping and property management duties. This company owns and operates several commercial properties in the Okanagan. Jane maintained this employment throughout the marriage. Jane was paid directors fees on top of her wages from, the record establishes, at least 2009 to 2019.
- [8] In February 2021, Jane took a leave of absence from working for Parent Co. That leave continued through the duration of trial and the unsuccessful reopening of the trial described in the Parenting Reasons.
- [9] Gord, with the exception of a brief paternity leave when MJM was born and a period during the COVID-19 pandemic when he retrained as a plumber to help support the family due to the loss of his employment for circumstances outside of his control, has spent substantively all of his working life as an aeronautical maintenance engineer ("AME").
- [10] At trial, I had the benefit of the evidence of two of Gord's former co-workers. It is quite apparent to me that despite the issues I find Gord has with substance misuse or abuse as detailed in the Parenting Reasons, Gord is a hard worker who takes pride in his employment; employment which requires maintaining the safety of pilots, passengers and flight attendants on the aircraft he maintains.
- [11] Although Gord's present income is less than it has been previously at times, I do not find any evidence to ground a conclusion that Gord is underemployed as that term is defined in s. 19 of the Guidelines. Gord is working full-time as an AME for an arm's length company at the locally based international airport which also allows him to facilitate parenting time with the Children. I have no doubt Gord would like to have a somewhat higher Guideline income going forward, but this was the most lucrative employment in his preferred industry that he was able to secure in the circumstances. I further glean from his evidence that this is a stable position such that making a lateral move to potentially make some additional income could result in some job insecurity.
- [12] Before turning to the details, I will reiterate my conclusion set forth in the Parenting Reasons that both Jane and Gord come from families of means who have been prepared to provide them with financial support. The degree of support is an area of dispute but both clearly have benefited from the financial assistance of their parental units during the material times. Gord's Income Information
- [13] Gord's Guideline income from all sources between from 2012 - 2022, I accept, is as follows:
G.G.M. 2012 2013 2014 2015 2016 Employment Income \$32,065 \$48,327 \$77,564 \$64,021
\$78,048 RRSP \$11,101 \$1,101 Self-Employment Business Income \$20,497 Workers Comp

Dividends \$62,500 \$62,500 \$59,000 \$11,800 EI \$11,640 \$5,335 Gord Income Line 15000
\$106,805 \$116,162 \$136,564 \$100,460 \$81,070 G.G.M. 2017 2018 2019 2020 2021 2022
Employment Income \$76,844 \$88,727 \$100,208 \$71,122 \$41,385 \$51,731 RRSP \$1,102 \$1,102
\$36,816 \$51,102 Self Employment \$9,550 Business Income \$9,350 \$345 \$1,000 Workers Comp
\$2,244 Dividends EI Gord Income Line 15000 \$86,394 \$98,077 \$103,208 \$73,074 \$78,201
\$102,833

- [14] I provide this summary by way of overview as I am not suggesting that it is appropriate to do a patterning of income over a 10-year period. That is entirely inconsistent with the relevant caselaw.
- [15] I simply have reproduced this summary, which was compiled by Gord's counsel based upon the evidentiary record at trial, to support my above conclusion that Gord has been consistently employed during the material times of the relationship/marriage and that the variations in his income are primarily the result of economic circumstances and a global pandemic which, at times, had a particular impact on employment as an AME.
- [16] According to Gord's Form 8 Financial Statement sworn May 2, 2023, his current Guideline income was \$51,731. However, based upon a review of the attached paystubs to said Form 8, Gord makes \$30.00 per hour in his present employment. Assuming a 40-hour work week (which I understand is the expectation) and without any paid overtime opportunities, that would amount to a Guideline income of \$54,000 per year. Jane's Income Information
- [17] Jane, as I noted in the Parenting Reasons, has a Master's degree. She, like Gord, is an intelligent individual.
- [18] Jane's employment through the marriage has generally been more flexible than Gord's given her employment with Parent Co. during the material times. Jane ceased employment with Parent Co. in February 2021, at least until date of trial, due to mental health issues.
- [19] Despite the paucity of evidence, I do accept that Jane has dealt with mental health issues pre-dating the marriage and that her difficulties are not manufactured for the purposes of being underemployed as defined pursuant to s. 19 of the Guidelines. I do not accept, however, that Jane left paid employment as a result of her parenting obligations having regard to the age of the Children, her job flexibility and her willingness to access third party child care when required or desired.
- [20] This, I find, is also consistent with Jane's position that she will be prepared to pay for certain disputed special and extraordinary expenses for MJM entirely without seeking contribution from Gord together with the mutual waiver of spousal support by consent. Said another way, it would be inconsistent, in my view, for Jane to be intentionally underemployed yet volunteer to pay for child related expenses and abandon any possible spousal support claim she might have had.

- [21] Moreover, the Children remain primarily resident with Jane even under the new Regular Parenting Schedule (as defined in the Parenting Reasons) and so her income is only relevant for determining Guideline incomes for the purposes of special and extraordinary expenses.
- [22] Turning to Jane's Guideline income, her relevant income during the same period articulated above of 2012 to 2022 for Gord, is as follows: J.L.M. 2012 2013 2014 2015 2016 Jane Income Line 15000 \$141,585 \$128,459 \$102,025 \$140,348 \$143,942 Employment Income \$135,769 \$118,108 \$90,219 \$129,125 \$135,000 Director's Fees (per Claimant Doc 1.12) \$95,000 \$95,000 \$95,000 \$90,000 \$80,000 Wages \$40,769 \$23,108 \$(4,781) \$39,125 \$55,000 RRSP Self Employment Business Income \$1,910 \$1,849 \$2,099 \$2,086 Interest and Investment Income \$3,877 \$7,302 \$8,507 \$9,137 \$8,942 S. 7 Childcare \$5,700 \$11,340 J.L.M. 2017 2018 2019 2020 2021 2022 Jane Income Line 15000 \$151,596 \$145,859 \$100,642 \$79,602 \$42,220 \$45,373 Employment Income \$140,476 \$135,063 \$90,300 \$71,157 \$2,220 \$10,373 Director's Fees (per Claimant Doc 1.12) 80,000 90,000 Wages \$60,476 \$45,063 \$71,157 \$220 \$10,373 RRSP \$40,000 \$35,000 Self Employment Business Income 2,501 739 Interest and Investment Income \$8,619 \$10,057 \$10,342 \$8,939 S. 7 Childcare \$8,940 \$1,480 \$6,915 Determination of Guideline Income Analysis
- [23] For context of my aforesaid factual conclusions, s. 19 of the Guidelines, referred to above, provides for the imputation of income to a party. Specifically, s. 19 provides as follows: 19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
 - (b) the spouse is exempt from paying federal or provincial income tax;
 - (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
 - (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
 - (e) the spouse's property is not reasonably utilized to generate income;
 - (f) the spouse has failed to provide income information when under a legal obligation to do so;
 - (g) the spouse unreasonably deducts expenses from income;
 - (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.
- [24] Further, I accept it is well established law that parents have an obligation to earn as much as they are capable of earning to meet their obligation to support their children. I cite but one of many examples: *P.K.C. v. J.R.R.*, 2014 BCSC 932 at para. 99.
- [25] This obligation applies even where, as here, Jane's income is only relevant for the purposes of determining the proportionate share of special and extraordinary expenses for the Children given the parenting arrangements and her waiver of spousal support.
- [26] Balanced against that is the recognition that Jane has had the benefit of significant familial support while she dealt with her mental health challenges in recent years and has not neglected her financial obligations to the Children. They have been and remain in her primary care and they have been more than adequately provided for financially while in her care.
- [27] The real question, thus, is how the monetary support Jane has received from her parents and will, I accept, likely continue to receive for the time being, be treated in determining her Guideline income.
- [28] A further complicating factor in this analysis is the cost of this protracted litigation. Based on the evidence tendered, I accept Jane's parents have advanced considerable funds for the purpose of this litigation which funds did assist Jane in retaining the Family Home (as defined in the Parenting Reasons) and addressing these corollary support claims. However, the funds have predominately been advanced for the purpose of addressing parenting issues regarding the Children. This is readily apparent from the amount of trial time spent on parenting issues and the relative paucity of time spent on financial issues.
- [29] In this regard, I do not accept Jane's evidence that these monies from her parents are actually a loan. Short of selling the Family Home, which I do not accept that Jane's parents would require given their extensive support of her to date, Jane has no means to repay these "loans" in the foreseeable future. These monies have been gifts which may, at the discretion of her parents or surviving parent, be factored into overall family estate planning but there is no indicia of reliable evidence which supports these amounts being a true loan.
- [30] Consistent with this, neither of Jane's parents have kept track of how much financial support has been provided to Jane since she left the workforce, despite both being, I find, financially sophisticated individuals. Moreover, at one point in his evidence Jane's father did use the term "gift" in relation to monies provided to Jane. This admission was somewhat vague given the lack of record keeping as there is a substantial difference between giving your child \$5,000 and \$100,000. However, it remains consistent with my view with the conclusion that the monies Jane has received are not loans.

- [31] Balanced against this is the fact that Gord currently has the privilege of living in his parent's very nice home (and not with his parents - they live elsewhere). Gord's father had a successful career as an accountant and so, as might be expected, has kept records of monies advanced to Gord and notional rent payable for the occupation of this home. Much like with Jane, I do not see any ability in the foreseeable future for Gord to repay his parents. His income as an AME has a ceiling and he has child support obligations as well as his personal expenses. As with Jane, I conclude the financial benefits conferred will most likely be dealt with, if at all, through estate planning.
- [32] Also relevant to these considerations is that both the Form 8 Financial Statements of Gord and Jane detail expenses that significantly exceed their reasonable income earning capacity by a wide margin. More so in the case of Jane since her employment income is nominal at present but both are living significantly outside of their means through the benefit of familial support.
- [33] The leading Ontario case in considering an adult child receiving monies from their parent and whether those monies amount to "income" for s. 19 Guideline purposes is *Bak v. Dobell*, 2007 ONCA 304.
- [34] In *Bak*, it was noted that while gifts "given in the normal course" are not presumptive income, circumstances surrounding a particular gift may be so unusual that they amount to "appropriate circumstances" in which to impute income.
- [35] The Court in *Bak*, at para. 75 identified a number of factors to consider in determining whether gifts should be imputed as income:
1. The regularity of the gifts;
 2. The duration of their receipt;
 3. Whether the gifts were part of the family's income during cohabitation that entrenched a certain lifestyle;
 4. Circumstances of the gifts that earmark them as exceptional;
 5. Whether the gifts do more than provide a basic standard of living;
 6. Whether the income generated by the gifts in proportion to the payor's entire income;
 7. Whether they are paid to an adult child during a crisis or period of disability;
 8. Whether the gifts are likely to continue;
 9. The true purpose and nature of the gift;
 10. Whether the funds create disposable income.

- [36] In another Ontario Court of Appeal decision, namely *Korman v Korman*, 2015 ONCA 578, the husband's parents assisted the parties financially throughout the marriage, including helping pay for their matrimonial home, gifting the husband money to start two businesses, paying for their children's camp and private school expenses, and paying the husband's legal fees. In determining child and spousal support, the trial judge imputed the gifts the husband received from his parents in his annual income. On appeal, the Court of Appeal held that the trial judge was correct in imputing the income. The Court found that it was appropriate for the trial judge to take into consideration the gifts given to the husband by his parents because the gifts were substantial in size and were provided regularly and on an ongoing basis. The Court stated that the gifts helped the husband establish a lifestyle well above a basic standard of living for himself and his family during the marriage:
- [37] Specifically, at paras. 63-64 and 66 of *Korman*, the Court held as follows:
- [63] In this context, the trial judge emphasized that "the [husband] has always received money from his parents and will likely continue to receive [monetary gifts] from his mother": at para. 126. He went on to hold, at para. 129, that, "[w]hile it is impossible to know exactly how much the [husband] will benefit from gifts or dividends, the amount of \$120,000.00 strikes a reasonable balance between earnings and other cash flow the [husband] is likely to receive".
- [64] The evidentiary record amply supports these findings. There was evidence before the trial judge establishing a settled pattern of monetary gifts to the husband by one or both of his parents, over many years, to assist him in maintaining his family's lifestyle, to finance specific family expenditures -- such as private school tuition or camp expenses for the children -- or to underwrite the costs of the husband's various business ventures. . . .
- [66] I note that, contrary to the husband's submission, imputing income on the basis of these substantial and consistent gifts does not impose any obligation on the husband's mother to continue such gifts in the future. It simply reflects the trial judge's factual determinations about the husband's actual past revenues and his likely financial future. If the situation changes, it would be open to the husband to request an adjustment accordingly, in the normal manner.
- [38] When contemplating whether regular monetary gifts should be imputed as income to a party, the British Columbia courts have recognized and applied the *Bak* and *Korman* decisions in such cases as in *Nielsen v. Nielsen*, 2007 BCCA 604, where the BC Court of Appeal cited *Bak* with approval and observed that the court in *Bak* had held that "...a gift of money from a parent can potentially be imputed as income to a spouse...." (at para. 39); and more recently, albeit in a non-binding authority, in *C.Z. v. Y.Y.*, 2022 BCPC 309. Guideline Income Conclusions

- [39] Considering the factors in Bak, it is frankly obvious a portion of the monetary gifts from her parents should be imputed as income to Jane. That portion is hard to precisely determine given the records and the extenuating legal expenses which are outside the norm and which should, with the release of these reasons and, more importantly, the Parenting Reasons, be substantially reduced to the cost of the parenting coordinator and possible annual reviews of support.
- [40] Also factoring into this analysis, in my view, is what Jane's realistic income earning potential is in the event that the resolution of this litigation improves her mental health such that she returns to the workforce.
- [41] Balancing all of these considerations, I have determined it is appropriate to impute Jane a Guideline income of \$100,000 per annum.
- [42] As it relates to Gord, his base salary at his present employment is determined to be \$54,000 per year. In addition, Gord gets the benefit of his parents' house. In his Form 8, Gord deposes that the notional rent for the home is \$2,000 per month. This is likely below fair market value for the type of house in question, especially given its location, but I do accept that having Gord in the home versus a third party tenant is preferable to Gord's parents to avoid damage, ensure proper maintenance and so forth. I further accept that \$2,000 is probably the minimum Gord would have to pay in order to rent a three-bedroom home elsewhere.
- [43] Balancing all of these considerations, I have determined it is appropriate to impute Gord a Guideline income of \$78,000 per annum.
- [44] For the purposes of the sharing of section 7 special and extraordinary expenses, an issue I will address below, the presumptive proportionate sharing would see Jane being responsible for 56% and Gord responsible for 44%, given the mutual waiver of spousal support. Child Support: Ongoing and Retroactive Legal Overview
- [45] The law on support is well established. I set out the two key sections of the Guidelines simply to put my further analysis in context.
- [46] Section 1 of the Guidelines sets out their objectives, which are:
- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
 - (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
 - (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
 - (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

- [47] Section 7 of the Guidelines, headed "Special or extraordinary expenses" provides: 7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
 - (b) that portion of the medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
 - (e) expenses for post-secondary education; and
 - (f) extraordinary expenses for extracurricular activities. . . . Sharing of expenses
- (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child. Subsidies, tax deductions, etc.
- (3) In determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense. Prospective and Partial Retroactive Support
- [48] The basic table amount of child support for two children with a Guideline income of \$78,000 per year is \$1,210 per month.
- [49] The submissions at first instance in this trial concluded on October 12, 2023. The evidence portion of the trial concluded in September 2023. I thus order that commencing October 1, 2023, Gord shall pay basic child support for MJM and MGM (birthdates to be inserted in the preamble of the Final Order) in the amount of \$1,210 per month.
- [50] Commencing June 1, 2024, the \$1,210 shall be paid on the 1st of each month thereafter pending court order or written agreement of the parties.

- [51] The partial retroactive support from October 1, 2013 to June 1, 2024, shall be paid to Jane by August 31, 2024. For the purposes of any enforcement, this amount should be crystalized for the purposes of this Final Order. If there is any dispute about the calculations, I conclude this is a mere mathematical calculation which falls within the jurisdiction of the parenting coordinator under the Family Law Act Regulation, B.C. Reg. 347/2-12. Review of Basic Child Support
- [52] Commencing in 2025, the parties shall exchange their complete T1 Income Tax returns, with attachments, and any corresponding notices of assessment or reassessment by no later than May 15 of each year.
- [53] If either party seeks to vary the amount of basic child support, they must provide notice in writing to the other party by June 1. Failing provision of written notice, the existing basic child support shall continue until the following year when the review provision is again engaged. In the event written notice is provided, any variation of support shall be presumptively retroactive to June 1 of the relevant year.
- [54] For the purposes of any review, Jane's Guideline income shall be set at a minimum of \$100,000 per annum and Gord's Guideline income shall be set at a minimum of \$78,000 per annum. Retroactive Child Support prior to Conclusion of Trial
- [55] Jane enrolled in the British Columbia Family Maintenance Agency service (previously known generally as FMEP). However, for reasons that I frankly did not entirely understand from Jane's evidence at trial, there were various e-transfers from Gord which Jane did not accept and then simply report to "FMEP" as support received so that the FMEP records could remain current and the Children receive the benefit of the payments Gord was making.
- [56] That said, as of September 7, 2023, Gord owed Jane \$454.08 in arrears and a default fee of \$400 to FMEP.
- [57] This \$454.08 must also be paid by Gord by August 31, 2024.
- [58] Pursuant to s. 14.4(6) of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127, I exercise my discretion to cancel the default fee. I consider it appropriate to do so on the basis that the "difficulties" between the parties in the sending and receipt of support in this high conflict matter resulted in the arrears versus a wilful default of financial obligations by the payor parent.
- [59] Beyond the above, I am not prepared to order any further retroactive child support in this matter. I do so on two bases of the test as articulated in *D.B.S. v. S.R.G.*, 2006 SCC 37, and further articulated in *Michel v. Graydon*, 2020 SCC 24, namely:
- a) I am not satisfied there has been any financial "blameworthy" conduct by Gord as that term has been judicially considered. There was extensive financial disclosure provided in this matter and both parties were sufficiently aware of the other's financial circumstances; and

- b) The Children have been more than adequately provided for during the time prior to trial and have lived a very comfortable lifestyle in both homes.
- [60] But for these two factors being compelling, I do consider there is a possible argument that a retroactive award would be a hardship to Gord -- but I need not analyze that argument in detail based on my above conclusions. Section 7 Expenses
- [61] The definition of "extraordinary expenses" in s. 7(1.1) states: (1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means
- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
 - (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate, (ii) the nature and number of the educational programs and extracurricular activities, (iii) any special needs and talents of the child or children, (iv) the overall cost of the programs and activities, and
 - (v) any other similar factor that the court considers relevant.
- [62] Section 7(1.1)(a) provides that expenses are extraordinary if they "exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover". The ability to pay an expense is determined having regard to both the income of the requesting spouse and any child support received.
- [63] Extraordinary expenses means an expense that is "unusual", "out of the ordinary", and "exceptional." In determining whether extracurricular activities are extraordinary, the Court of Appeal adopted a subjective analysis that considers the expense in relation to the combined incomes of the parents.
- [64] In *McLaughlin v. McLaughlin*, [1998] BCJ No 2514, paras. 81-82, the Court explained the section 7 analysis is a two-pronged inquiry:
- a) First, the court should determine whether the expense claimed under section 7(1)(f) of the Guidelines is an extraordinary expense or extracurricular activity by considering the following factors:
 - i. the combined income of the parties; ii. the nature and amount of the individual expense; iii. the nature and number of the activities; iv. any special needs or talents of the children;

- v. the overall cost of the activities; and vi. any other similar factor that the court considers relevant.
 - b) Once the court determines that an expense falls within section 7(1)(f) of the Guidelines, a court must then determine whether the expenses are necessary in relation to the child's best interests and reasonable in the circumstances having regard to the following factors:
 - i. the means of the spouses and those of the child; and ii. the family spending pattern prior to separation.
- [65] McLaughlin predates a key amendment to the Guidelines but I accept remains generally instructive as to key foundational principles.
- [66] Where the recipient spouse can afford claimed s. 7 expenses, and those expenses are not anything more than ordinary expenses related to regular extracurricular activities, the court should not order a further amount for s. 7 expenses: *L.A.M. v. S.C.M.*, 2020 BCSC 67.
- [67] In *L.A.M.* Justice G.P. Weatherill provided a helpful overview of a number of cases considering section 7 expenses under the current operating Guidelines.
- [68] Before reciting that overview, which commences at para. 24 of *L.A.M.*, I must acknowledge that *L.A.M.* is not exactly on all fours with this case. As a starting point, I recognize that there were three children of relatively similar age to MJM and MGM. The extra child, I conclude, is not a true distinguishing feature. The distinguishable feature is that the father in *L.A.M.* was a vascular surgeon and the mother was a former respiratory therapist who had retrained to become a self-employed clinical counsellor. There was also a separation agreement already in place. The parents were thus, within the context of the support regime agreed upon, economically self sufficient. In comparison, as I have detailed, both parties here remain dependent on varying levels of financial parenting support on an enduring basis.
- [69] Notwithstanding these distinguishing financial features, the review of the law by Justice G.P. Weatherill remains of assistance:
- [24] In *Clarke v. Clarke*, 2014 BCSC 824, Justice Baird stated the following at paras. 53-54:
- [53] There is no straightforward definition for "extraordinary" although section 7.1, recently added to the Guidelines, provides some guidance; it requires a sort of proportionality inquiry, looking at the nature and number of activities, any special needs or talents of the child, the overall cost of the activities, and any other similar relevant factors.
- [54] Because the tests are fact-specific, I cannot definitively say what types of expenses qualify in every case. But I can say what does not qualify as special or extraordinary: · Expenses such as "entertainment, pets, vacations, school fees, school supplies, children's allowances, meals outside the home, personal grooming, and clothing" are not section 7 expenses. · A home computer and other similar technologies do not qualify as extraordinary as they are "common item[s] found in most homes". · Recreational sports and other similar

extracurricular activities -- dance lessons, community sports leagues, ski trips, etcetera -- are generally considered "ordinary." The question is whether the participation goes beyond that of the "average child". [Citations omitted; emphasis in original.] . . .

[27] In *N.A.D. v. S.A.D.*, 2010 BCSC 269, Justice Rogers was asked to deal with a similar issue respecting recreational activities for children and determine whether they constituted extraordinary expenses. He reasoned:

[17] I note that the plaintiff has not offered evidence in support of the notion that the children have particular talents in bicycle riding, swimming, skating, soccer or martial arts. There is no evidence on which the court could rely to conclude that these activities satisfy any particular need or talent. The expenses for these activities are all quite modest and are easily within the financial capacity of a single parent who earns \$35,000 to \$45,000 per year and receives on child support the order of \$900 per month. In my view, the expenses claimed by the plaintiff for recreational activities such as swimming, soccer, skating and taekwondo do not meet the criteria of special or extraordinary expenses under s. 7 of the Guidelines. Her claim for a contribution from the defendant for those expenses is dismissed.

[70] Jane has claimed a number of expenses for the Children, including:

- a) Daycare expenses for the Children;
- b) Medical and dental expenses, including medication, for the Children;
- c) Counselling for the Children;
- d) School fees for the Children;
- e) Ski passes, ski lessons, and ski equipment for the Children;
- f) Horseback riding lessons, camps, and a half lease on a horse for MJM;
- g) Soccer and Martial Arts for MGM;
- h) Tutoring for the children;
- i) clothes and children's belongings repurchased because they were not returned to Jane with the Children; and
- j) Nanny hired by Jane so that she can have help with children, have one-on-one time with kids, facilitate her participation in this litigation, and take MJM to horseback riding during Jane's parenting time.

[71] In her testimony, Jane did acknowledge that she incurred expenses for the Children without the agreement of Gord ahead of time, including (but not limited to) counselling, ski equipment, horseback riding for MJM, MGM's martial arts, and tutoring.

- [72] Further, the evidence established that Gord, as of the date of trial, paid \$4500 to FMEP for section 7 expenses to date (\$500 per month since the Order of Justice Norell in December 2023). Gord is entitled to credit for those sums and any further payments against the below sums since the conclusion of the trial.
- [73] In his closing submissions, Gord agreed to pay his share of prescriptions for the Children, ski passes (including the past two years) for the Children, tutoring during the respective parent's parenting time, horseback riding lessons for MJM (not the lease fee for the horse upon which those lessons occur, however), school bus passes, and daycare (subject to the below calculation for the tax benefit Jane received on account of the tax deductibility of child care expenses).
- [74] Specifically, on the daycare issue, I accept Jane received a tax deduction in 2020 for Green Gables daycare while she was still employed and childcare was an appropriate expense in accordance with the Guidelines. Therefore, I accept the childcare expenses sought for that year should be reduced by the percentage Jane received as a tax deduction for child care. Based on Jane's marginal tax rate for 2020, I accept her total tax payable of \$8939 should be divided by her net income of \$65,297 resulting in a benefit of 13.236% and a childcare deduction of $\$8939 \times 13.236\% = \$1,183$. To the extent there is some marginal error in that taxation analysis, I consider it to be de minimus to either party in the overall s. 7 analysis and Guideline income analysis.
- [75] Thus, turning to the substantive dispute, Gord opposes paying for the following expenses, both retroactively and prospectively:
- Counselling for the Children;
 - School fees for the Children;
 - Ski lessons and ski equipment for the Children;
 - Horseback riding camps, and a half lease on the horse leased for MJM;
 - Clothes and children's belongings repurchased because they were not returned to Jane with the Children;
 - Martial arts for MGM (retroactively but with consent, prospectively); and
 - Costs for child care relating to a nanny hired by Jane when she was not working or engaged in a course of educational study.
- [76] Turning to the retroactive component first, below is an accounting of the agreed to section 7 expenses to be paid and/or reimbursed by Gord which was provided by his counsel in closing submissions. It is very helpful and appreciated by the Court: Gord's Position
Daycare: June 23, 2023 Drop in for both kids \$78.00 Jul-20 MJM and MGM \$1,067.00 Aug-20 MJM \$494.00 Aug-20 MGM \$500.00 Aug-20 "drop in" \$ 78.00 Sep-20 MJM and MGM \$942.00 Oct-20 MJM and MGM \$584.50 Nov-20 MJM and MGM (Jane received Subsidy) \$149.72 Dec-20

MJM and MGM \$346.39 SUBTOTAL AS PER JANE'S SPREADSHEET \$4,239.61 Agreed 2020 ITR Child Care Expenses Deduction as per ITR (\$1183) Jan - Dec 2022 Green Gables - MGM \$40.00 Agreed TOTAL CHILD CARE \$3056.61 School: September 9, 2020 MJM School Fees \$35.00 Not a S. 7 December 23, 2020 MGM School Fees \$35.00 Not a S. 7 September 20, 2021 MJM and MGM School Fees* \$95.00 Not a S. 7 May 25, 2022 MJM Misc. School* \$18.00 Not a S. 7 June 13, 2022 MJM Yearbook* \$27.00 Not a S. 7 June 13, 2022 MGM Yearbook* \$27.00 Not a S. 7 Subtotal: \$237.00 NOT AGREED *NOT INCLUDED IN JANE'S SPREADSHEET, BUT RECEIPT INCLUDED Gord's Position Prescriptions: June 10, 2020 MJM- Biphentin \$71.69 July 14, 2020 MJM- Biphentin \$31.28 August 10, 2020 MJM - Biphentin \$91.42 Jan 13, 2021 - Dec 23, 2021 MJM \$1,374.28 Jul 20, 2022 - Jul 26, 2022 MGM \$39.42 Jan 7, 2022 - Jul 28, 2022 MJM \$1,540.53 September 27, 2022 MJM - Vyvanse \$ 44.46 September 27, 2022 MJM - Intuniv \$54.86 October 13, 2022 MJM - Intuniv \$5.15 October 14, 2022 MJM - Vyvanse \$158.87 October 16, 2022 MJM - Intuniv \$197.62 November 16, 2022 MJM - Vyvanse \$ 187.81 January 4, 2023 MJM - Vyvanse \$187.81 January 19, 2023 MJM - Intuniv (2 mo supply) \$197.62 Subtotal: \$4,182.82 Agreed Dental: November 23, 2021 MJM Dentist \$167.60 October 13, 2021 MGM Dentist \$143.50 Subtotal: \$ 311.10 Agreed Counselling w/ Gail Clark: Jul 6, 2020 - Dec 2, 2020 \$1,960.00 Subtotal: \$1,960.00 Not Agreed Ski Equipment: July 11, 2020 Ski Clothing \$174.09 Clothing not a S. 7 September 1, 2020 neck gaiters \$ 55.96 Clothing not a S. 7 November 1, 2020 Helmet and Goggles \$137.72 Clothing not a S. 7 November 1, 2020 Ski clothing \$44.78 Clothing not a S. 7 September 1, 2020 Ski jacket \$ 40.00 Clothing not a S. 7 September 22, 2020 Ski clothing \$150.00 Clothing not a S. 7 September 7, 2020 Ski jacket \$50.00 Clothing not a S. 7 November 22, 2020 Ski Boots for MGM \$20.00 Clothing not a S. 7 November 22, 2020 Ski Boots for MJM \$35.00 Clothing not a S. 7 November 1, 2020 Skis for MGM \$183.73 Clothing not a S. 7 November 11, 2020 Ski Jacket \$83.99 Clothing not a S. 7 October 27, 2020 gloves and thermals \$128.29 Clothing not a S. 7 November 4, 2020 Goggles and helmets \$307.59 Clothing not a S. 7 September 26, 2020 Big White passes \$321.51 Agreed January 5, 2021 MJM Blazer Program \$410.00 Agreed October 5, 2021 MJM and MGM Season Pass 2021/2022 \$799.05 Agreed October 27, 2021 MGM Blazer Program \$410.00 Agreed 2022-2023 MJM Season Pass \$387.45 Agreed 2022-2023 MGM Season Pass \$387.45 Agreed subtotal: \$4,126.61 \$2715.46 Agreed Horseback Riding: May 22, 2021 MJM Lessons \$472.50 Agreed May 9, 2022 Sabrina Townsend \$240.00 Agreed July 11, 2022 MJM Horse Camp \$500.00 July 11, 2022 MGM Horse Camp \$125.00 July 13, 2022 MGM Horse Camp \$125.00 July 14, 2022 MGM Horse Camp \$125.00 August 4, 2022 MJM Riding \$480.00 Agreed August 17, 2022 Sabrina Townsend \$360.00 Agreed September 5, 2022 Sabrina Townsend \$240.00 Agreed September 29, 2022 KRC Fall Fundraiser \$135.00 September 28, 2022 1/2 Lease \$500.00 October 4, 2022 Shipping Turbo \$42.00 October 12, 2022 Sabrina Townsend \$240.00 November 1, 2022 1/2 Lease \$525.00 November 2, 2022 Sabrina Townsend \$280.00 December 1, 2022 1/2 Lease \$525.00 December 27, 2022 Sabrina Townsend \$160.00 January 1, 2023 1/2 Lease \$525.00 January 30, 2023 Sabrina Townsend \$240.00 February 1, 2023 1/2 Lease \$525.00 March 2, 2023 Sabrina Townsend \$200.00 Agreed Subtotal: \$6,564.50 \$1992.50 Agreed Not Agreed Soccer/Martial Arts: July 26, 2021 Soccer MGM \$65.00 Agreed January 31, 2022 Soccer MGM \$165.00 Agreed April 1, 2021 Martial Arts - MGM \$1,194.89 Not Agreed Subtotal: \$1,424.89 Agreed \$230

Clothing: June 3, 2022 MGM Shoes (Jane indicated not returned) \$47.49 Not s. 7 April 20, 2022 MGM book (Jane indicated not returned) \$10.49 Not s. 7 June 15, 2022 MJM's Shoes (Jane indicated not returned) \$136.49 Not s. 7 subtotal: \$194.47 Not Agreed Tutor: January 23, 2023 Letkeman \$50.00 January 31, 2023 Letkeman \$50.00 February 7, 2023 Letkeman \$50.00 February 16, 2023 Letkeman \$ 70.00 February 21, 2023 Letkeman \$ 50.00 February 28, 2023 Letkeman \$ 50.00 Subtotal: \$320.00 Not Agreed-Gord also paid some tutoring sessions

- [77] As such, Gord agrees to the following on a retroactive basis for section 7 expenses: Child care: \$3056.61 Prescriptions: \$4182.82 Dental: \$311.10 Skiing: \$3715.46 Horse riding lessons: \$1992.50 MGM Soccer: \$230.00 TOTAL \$13,488.49
- [78] In my view, Gord's position is consistent with an appropriate interpretation of s. 7 of the Guidelines. I thus make the following conclusions which, in my view, are in accordance with the legislation and the caselaw cited above:
- a) Certain s. 7 expenses such as child care and unreimbursed medical costs (namely, MJM's prescribed and, I accept, necessary medications) are not subject to negotiation apart from determining proportional sharing based on Guideline income and taxation/subsidies as I already addressed above;
 - b) Neither parent should treat s. 7 of the Guidelines as a proverbial blank cheque to incur expenses on behalf of the Children, even if they consider the expense to be in the best interests of the Children without consultation with the other guardian. Balanced against that, consent should not be unreasonably withheld where an activity falls within the scope of s. 7;
 - c) Based upon the income levels of these parties, not all extracurricular activities for the Children are special and extraordinary in accordance with s. 7.1 of the Guidelines. Martial arts, house soccer, basic school fees, replacement clothes and so forth are contemplated within their respective Guideline incomes generally.
- [79] Having regard to my above conclusion as to Guideline incomes for the parties and Gord's retroactive support obligation, Gord's proportionate share of the retroactive section 7 expenses is determined to be \$5,934.93 (\$13,488.49 x 0.44%).
- [80] In the event of a dispute as to the mathematical calculation of what Gord has contributed since the date of trial as against these calculations, I conclude again that this is a matter within the scope of the parenting coordinator as I have made the necessary findings of fact and all that is required is an updated review of the calculations having regard to the passage of time since the evidentiary portion of this trial closed.
- [81] Prospectively, I order that section 7 expenses shall include the following and be shared proportionately (namely 56% and 44% respectively) in accordance with my determination of the parties' Guideline incomes as set out herein or as adjusted by written agreement or court order:

- a) that portion of the medical and dental insurance premiums attributable to the child; in this regard each parent will sign up for benefits if available through employment and provide the other parent the necessary extended benefit information forthwith;
 - b) health-related expenses that exceed insurance reimbursement by at least \$100 annually. Beyond prescription drugs and glasses and/or contact lenses, except as provided for in subparagraph (c), the appropriateness of health related expenses including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy and occupational therapy shall, unless the parties agree in writing, fall within the jurisdiction of the parenting coordinator and in the event that there is no parenting coordinator engaged following the term contemplated by the Parenting Reasons, by court order;
 - c) Counselling for MJM provided the counsellor is independent of any counsellor utilized by Jane or Gord for personal purposes. This restriction does not preclude Jane or Gord from exercising their rights as guardians under the FLA to obtain information from MJM's counsellor or mutually authorizing the parenting coordinator to contact the counsellor as may be appropriate in the circumstances;
 - d) Tutoring expenses and necessary educational expenses for the Children while in the care of each respective parent. This expressly does not include ordinary school fees but shall include school bussing costs and extraordinary field trip costs. Any dispute over what falls within this provision is within the jurisdiction of the parenting coordinator or in the event no parenting coordinator is engaged following the term contemplated by the Parenting Reasons, by court order;
 - e) \$320.00 per month in equestrian expenses for MJM. This contemplates MJM's historical lesson expenses and some very modest contribution by Gord to show fees. Jane shall otherwise be responsible for all other equestrian expenses;
 - f) Ski passes for the Children. If the parties wish to be economical, the sharing of ski equipment between them would be a prudent topic of conversation with the parenting coordinator but otherwise the default will be that the ski passes are shared as a special and extraordinary expense and it is the responsibility of each parent to source their own necessary equipment;
 - g) Such other extraordinary expenses for extracurricular activities, if agreed to in writing in advance or as determined by the parenting coordinator.
- [82] Having regard to the ages of the Children at present and the very plausible material changes in the parties' financial circumstances, I have not made any order regarding post secondary educational expenses. That issue will have to be dealt with by the parties or the Court in due course once the Children are more mature. Divorce

- [83] The divorce is not opposed by either party. It is also appropriate pursuant to the necessary requirements of s. 8 of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), given that between the consent order on property issues spoken to by consent at the outset of the trial, the Parenting Reasons and these reasons for judgment, all of the necessary substantive requirements for the granting of a divorce are satisfied.
- [84] I am further satisfied there is no prospect of reconciliation, that there is no collusion, there is a clearance certificate and that there is a registrar's certificate of pleadings on file.
- [85] Accordingly, I shall order, pursuant to s. 8 of the Divorce Act (Canada), that the claimant, J.L.M., and the respondent, G.G.M., who were married at Kelowna, B.C. on August 31, 2009, shall be divorced from each other, such divorce to take effect 31 days after the date of these reasons. (Full legal names of the parties to be included in the Final Order) Costs
- [86] Costs pursuant to R. 16 of the Supreme Court Family Rules are always at the discretion of the trial judge.
- [87] In a lengthy trial such as this, it is difficult for the parties to make fulsome submissions on costs given that the outcome of the trial is unknown to the parties at the conclusion of submissions. This is even more so when there have been changes and withdrawals of counsel following trial.
- [88] Further, it is possible that there are submissions to be made with respect to formal offers that may have been exchanged pursuant to R. 11-1.
- [89] The schedule I will set to deal with costs is thus as follows:
- a) Counsel for the claimant shall submit written submissions on costs, through Supreme Court Scheduling, within 30 days of issuance of these reasons for judgment.
 - b) Counsel for the respondent shall submit written submissions for costs, through Supreme Court Scheduling, within 60 days of issuance of these reasons for judgment.
 - c) Counsel for the claimant and the respondent may agree, by consent, to extend these deadlines to account for other trial obligations or scheduled vacations, but confirmation of any adjusted schedule for submissions must be provided to the Court, through Supreme Court Scheduling, before the 30-day deadline for receipt of the claimant's submissions.
 - d) Following receipt of submissions from both parties, an oral hearing on costs shall be scheduled at a date convenient to counsel and the Court. In the event it is necessary to facilitate an earlier date, leave is presumptively granted for counsel to appear at the cost hearing(s) via MS Teams. Form of Order and Seizure

- [90] As with the Parenting Reasons, I acknowledge there might be some provisions in the final order which may be contentious in reaching drafting consensus despite my best efforts. The entry of this final order in a timely way is very important, however, given I have delegated jurisdiction over certain matters to the "to be determined" parenting coordinator. As such, the usual process of applying to settle the terms of the order before the registrar pursuant to the Rules may be an impediment due to access to judicial resources.
- [91] I shall again grant leave to the parties, if necessary, to submit their preferred form of final order through Supreme Court Scheduling in accordance with the schedule provided for in the Parenting Reasons.
- [92] Save and except for my role in settling the form of order, selecting the parenting coordinator and addressing the issues of costs, I wish to make clear to the parties that I am not otherwise seized of this matter. "Hardwick 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/24/09/2024BCSC0999.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/j-l-m-v-g-g-m-2024>

Prepared on 25 October 2026 · Esheria