
CANADA / JUDGMENT

J.M.D. v. R.M.J.D.

2011 BCSC 1295

COURT

Supreme Court of British Columbia

DECIDED

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2011 BCSC 1295 J.M.D. v. R.M.J.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.M.D. v. R.M.J.D.,

2011 BCSC 1295

Date: 20110929

Docket: E050301

Registry: Vancouver

Between:

J.M.D.

Plaintiff

And

R.M.J.D.

Defendant

Before: The Honourable Mr. Justice Harris

Reasons for Judgment

Counsel for the Plaintiff:

Richard A. Fayerman

Counsel for the Defendant:

Catherine M. Brink

Place and Date of Hearing:

Vancouver, B.C.

July 28 and September 14, 2011

Date of Written Submissions

September 23, 2011

Place and Date of Judgment:

Vancouver, B.C.

September 29, 2011

Introduction

- [1] This application is for an order of divorce and for a determination of child support obligations owed by the defendant in respect of three children. In order to appreciate the issues to be decided, it is necessary to set out some background.
- [2] In 2005, Mr. Justice Goepel heard a seven day trial that dealt with the issues of division of assets, spousal support, retroactive child support and whether the plaintiff was entitled to a compensation order for work done by her in 2004.
- [3] The parties had settled issues of custody, access and ongoing child support. These matters were, nonetheless, incorporated in the trial order. The claim for a divorce order was adjourned generally. The trial reasons are indexed at 2005 BCSC 1185.
- [4] J.M.D. now applies for the order for divorce. That order is not opposed. It is clear that the evidentiary and jurisdictional foundation for making the divorce order is in the record. Accordingly, that order is granted on the standard terms. The remainder of these reasons deal with the issue of child support.
- [5] Goepel J. dealt with the issue of child support in the following way:
 - [17] Mr. R.M.J.D. has voluntarily paid child support of \$1,000 per month since March 2005. This amount is well in excess of what he would be ordered to pay under the Guidelines. Mr. R.M.J.D. has agreed to continue to pay \$1,000 a month in child support, together with one-half (1/2) of the costs of his children's various sports activities through June 2007, at which time either party can apply to vary child support to bring it into conformity with the Guidelines. This is acceptable to Ms. J.M.D..
 - [18] I therefore order child support of \$1,000 per month payable on the first day of each month commencing September 1, 2005. Mr. R.M.J.D. will also pay one-half (1/2) of the costs of his children's various sports activities upon presentation of receipts. This order will remain in effect until at least July 1, 2007. Subsequent to July 1, 2007, either party may apply for a review to bring child support payments into conformity with the Guidelines. The parties will

exchange financial information no later than June 30 each year, including their personal income tax returns and the financial statements of any companies they are operating.

- [6] R.M.J.D. did pay the \$1,000 per month child support and continued to do so beyond July 2007. Neither party exchanged financial information. After July 2007, R.M.J.D. unilaterally reduced child support when the eldest child came to live with him and stopped living with her mother. He also unilaterally reduced child support still further when the second child turned 18, apparently under the mistaken assumption that his child support obligations would cease when the child turned 18. In neither instance did R.M.J.D. apply to vary the order to reduce his child support obligations as defined in the order.
- [7] It is important to understand the nature of the issue before me as defined by the parties. This is so because in my view some of the argument that I heard characterized the issue in terms different from what was applied for in the Notice of Application and what was conceded in the Application Response.
- [8] J.M.D. applied for an order that the defendant "pay to the Applicant support for the children both retroactive and prospective, in an amount commensurate with the Defendants Guideline Income, pursuant to the provisions of the Federal Child Support Guidelines".
- [9] R.M.J.D. took the following position in his Application Response:

The application respondent agrees to a determination of child support payable between the parties pursuant to the Child Support Guidelines, both retroactively and prospectively, subject to the children's entitlement to support and subject to a fair determination of the parties' respective incomes. In particular, the respondent's income should not include a nonrecurring capital gain as part of his income for Guideline purposes.

- [10] What I take from this is that J.M.D. has asked this court to determine on both a retroactive and a prospective basis what R.M.J.D.'s child support obligations are based on his Guideline income. R.M.J.D. has agreed that I should determine that question. The parties do not disagree about the issue, but they do disagree about what his income is. Accordingly, much of the argument I heard about variation of child support obligations or cancellation of arrears is irrelevant to the issue as framed by J.M.D. and consented to by R.M.J.D. I note that in determining what R.M.J.D.'s child support obligations are, I will be protecting the right of children to child support from their father.
- [11] Having said this, the principal issues that I need to decide are the following:
- (a) should a capital gain on the sale of property awarded to R.M.J.D. at trial be taken into income for determining his 2010 Guideline income?
 - (b) was R.M.J.D. entitled to adjust child support payments when his daughter lived with him and his son turned 18?
 - (c) what was R.M.J.D.'s guideline income?

- (d) should R.M.J.D. be credited for overpayment of child support after July 2007?
 - (e) what child support obligations does R.M.J.D. owe for the material years?
- [12] I turn now to a more detailed examination of the background facts giving rise to this application.

Facts

- [13] J.M.D. and R.M.J.D. have three children; A.M. born January 4, 1990; A.R. born December 26, 1992; and K.J. born November 13, 1994.
- [14] At first all three children lived with their mother after the separation of their parents.
- [15] In March 2009, A.M. moved in with the defendant. At that time she was 19 years old, but in post-secondary education. She lived with her father until August 2010 when she returned to live with J.M.D., who had been diagnosed with cancer in November 2009 and was ill from her cancer treatments.
- [16] In April 2009, after A.M. had moved in with R.M.J.D., R.M.J.D. reduced the child support he paid to J.M.D. from \$1,000 per month to \$650 per month. R.M.J.D. did not increase child support payments to \$1,000 per month when A.M. returned to live with her mother.
- [17] Beginning January 2011, R.M.J.D. unilaterally reduced child support from \$650 per month to \$400 per month. The second child of the marriage had turned 18 on December 26, 2010.
- [18] At trial, R.M.J.D. had been awarded a property on Granville Avenue as part of the division of assets. At that time the property was mortgage free. In valuing the asset for the purpose of division, Goepel J. relied upon R.M.J.D.'s evidence that he had no intention of residing in that property as a principal residence. Accordingly, the court recognized the tax implications of a potential sale of the property and reduced its value by \$30,000 to take into account those tax consequences.
- [19] R.M.J.D. sold the Granville Avenue property in May 2010 for \$1,025,000. The proceeds of the sale have been invested in financial instruments. R.M.J.D. deposes that the sale proceeds are being held pending the purchase of another property in which he intends to live.
- [20] Two of the children are now over 19. The facts bearing on their status as children of the marriage will be canvassed in connection with my analysis of that issue.

Should the capital gain on the sale of the Granville Avenue property be taken into income for guideline purposes?

- [21] The trial divided the family assets between the spouses. Among other assets, each party received real estate: R.M.J.D. received the Granville Avenue property (a rental property), J.M.D. received the family home. The trial judge reapportioned the division of assets marginally in favour of J.M.D. to take account of spousal support considerations. The division of the family assets divided the wealth of the family between the spouses.
- [22] It is important to note that the division of assets between J.M.D. and R.M.J.D. ordered at trial was not influenced by nor did it take into account R.M.J.D.'s child support obligations. R.M.J.D.'s child support obligations took into account his financial means and he agreed to pay an amount of child support in excess of what would have been required of him under the Guidelines.
- [23] Child support is the right of the child. The purpose of child support is to ensure a fair standard of support that ensures that children continue to benefit from the financial means of both spouses after separation. If a payor parent's means increase, his or her obligation to pay child support increases accordingly. These principles are discussed in, for example, *S. (D.B.) v. G. (S.R.)*, 2006 SCC 37. Moreover, as a general principle, children are entitled to benefit from a sudden increase in lifestyle or money available to a payor parent: see, *Plett v. Plett*, 2009 BCSC 227.
- [24] The most complete consideration, provided to me, of how to analyse the implications for the assessment of Guideline income of a non-recurring capital gain is found in *Ewing v. Ewing*, 2009 ABCA 227. That case considers many of the cases cited to me in argument. It is clear from that case that the ultimate question is whether a non-recurring capital gain should fairly be treated in substance as enhancing the income or financial means of a parent. Each case is fact specific and there are cases in which, given the nature of the capital gain, the court has determined that a non-recurring gain should not be included in income for Guideline purposes: see, for example, *Anderson v. Anderson*, [1997] B.C.J. No. 2496; 32 R.F.L. (4th) 177; *Krupa v. Krupa*, 2010 BCSC 1400. In other cases, a non-recurring gain has been brought into income for Guideline purposes because the capital gain is properly seen in substance as income that enhances the financial means of the payor parent: see, for example, *Shields v. Shields*, 2006 ABQB 368; *Shick v. Shick*, 2008 ABCA 196.
- [25] In *Ewing* it is recognised that the starting point for the calculation of annual income is s. 16 of the Guidelines. Presumptively, appropriate income for child support purposes is what is shown on a payor parent's tax return including any capital gain. However, a court has a discretion under s. 17 of the Guidelines to determine that a s. 16 calculation would not be a fair determination and, if it does so, s. 17(10) requires the court to determine a "fair and reasonable amount" having regard to the payor's income over the last three years and any "pattern of income, fluctuation of income or receipt of a non-recurring amount during those years".
- [26] After considering the authorities, including the principal authorities relied on by J.M.D. before me, the Alberta Court of Appeal summarized its analysis in the following terms:

- [33] Thus, the nature of the sale of a capital asset, or other extraordinary gain or fluctuation in income, should always be considered when determining fair income. Frequently the fairest method of income may be to exclude the gain. On the other hand, where a non-recurring gain is in the nature of an employment bonus, in the sense that it is truly income for work done, its inclusion in section 16 income may not make that method of calculation unfair. The sale of stock options as part of annual compensation may be such an example.
- [34] In addition to considering the nature of the non-recurring gain, or fluctuation of income, it is also important to consider the purpose of support orders when deciding whether a section 16 calculation of income is fair. Support orders are directed at ensuring that, to the extent possible, that children enjoy the same standard of living they would have experienced if the marriage had not broken down. Thus, when determining a fair and reasonable income, the day-to-day standard of living the family would have enjoyed, had it remained intact, is relevant. A court might want to consider whether a specific non-recurring gain would have resulted in a change in lifestyle of a particular family, had it remained intact. For instance, if the family's standard of living is high to begin with, the unusual gain may not affect the family's standard of living at all but may simply be seen as a means of providing security for future years. Thus, notwithstanding a large gain, a section 16 calculation which includes the gain might not be the fairest method of calculation.
- [35] While the courts have the discretion to determine whether the section 16 income calculation is fair, having regard to non-recurring gains and patterns of income, the following, although not an exhaustive list, outlines some of the matters a court might consider:

Is the non-recurring gain or fluctuation actually in the nature of a bonus or other incentive payment akin to income for work done for that year?

Is the non-recurring gain a sale of assets that formed the basis of the payor's income?

Will the capital generated from a sale provide a source of income for the future?

Are the non-recurring gains received at an age when they constitute the payor's retirement fund, or partial retirement fund, such that it may not be fair to consider the whole amount, or any of it, as income for child support purposes?

Is the payor in the business of buying and selling capital assets year after year such that those amounts, while the sale of capital, are in actuality more in the nature of income?

Is inclusion of the amount necessary to provide proper child support in all the circumstances?

Is the increase in income due to the sale of assets which have already been divided between the spouses, so that including them as income might be akin to redistributing what has already been shared?

Did the non-recurring gain even generate cash, or was it merely the result of a restructuring of capital for tax or other legitimate business reasons?

Does the inclusion of the amount result in wealth distribution as opposed to proper support for the children?

- [27] R.M.J.D. deposes that, after trial, he did live in the Granville Avenue property at certain times. He was living in it as his principal residence when he sold it. Not having lived in the Granville Avenue property continuously since it was purchased, some significant portion of the appreciation in the value of the property is a taxable capital gain and is reportable on his income tax returns.
- [28] He says that he has sold the property and invested the proceeds, intending to purchase a new home in which he will live. In effect, he has temporarily substituted one capital asset [the Granville Avenue property] for another capital asset [the invested monies].
- [29] In my view, had R.M.J.D. immediately bought a new home with the proceeds of the sale of Granville Avenue there would be no legitimate basis to consider taking any capital gain into income for child support purposes. The capital gain would not be akin to income and including the capital gain would not be necessary to provide proper child support. If R.M.J.D. moved into the new home as his primary residence, he would have simply substituted one piece of property for another; one capital asset for another. If he did not move in, but rented the new home, the income generated from the substituted capital asset would be income for child support purposes, but not the capital gain associated with the transaction. The substitution of one capital asset for another of similar value would not represent an increase in financial means.
- [30] The issue is somewhat more complicated because R.M.J.D. has not substituted like asset for like. He has sold real estate and is holding financial assets. It appears that R.M.J.D. may be speculating on a decline in real estate values, given that he has not reinvested the proceeds in real estate in nearly 18 months. If this is correct, and R.M.J.D. is successful, then his financial means may be materially altered. He may be able to buy a similar property to Granville Avenue for significantly less money. But whether this will turn out to be the case is not yet known. In the meantime, the sale proceeds of Granville Avenue are invested and to the extent that they yield a return that return will constitute income, just as rent would have done, if a new property had been bought and rented.
- [31] On the facts before me, I am not persuaded that the capital gain on sale of the Granville Avenue property should be treated as income. I am influenced in reaching this conclusion by the fact that any return generated by the sale proceeds will be taken into income or if other real estate is purchased and rented then the rent will also be considered income. The Granville Avenue property was a capital asset used to generate income. It was not income itself. Both capital assets are capable of generating income and it is more appropriate to focus on the income generated by the asset for support purposes, not the asset itself.

- [32] The sale of Granville Avenue is not akin to income; it is not analogous to a bonus or incentive income in the form of stock options. R.M.J.D. is not in the business of buying and selling assets as a source of income. The proceeds of the sale are not being used as income (except marginally to defray legal costs). They are being held at a financial institution, waiting, apparently, to be reinvested.
- [33] If R.M.J.D. buys a new primary residence one asset will have been substituted for another. Only if there is a significant fall in real estate values will R.M.J.D.'s financial means be materially affected and only then will any remaining surplus proceeds potentially acquire the character of income for child support purposes. Only then will it be apparent whether the capital generated from the sale of Granville Avenue and not reinvested in real estate provides a source of income for the future.
- [34] The fact that an illiquid asset (real property) has been converted to a liquid asset (financial assets) does not necessarily convert the asset from capital to income. Here it is of some significance that the proceeds of the sale of Granville Avenue have not been used to finance an increased standard of living by R.M.J.D. Had they done so, then the children may well have been entitled to share in that increased standard of living because through his conduct R.M.J.D. would have converted a capital asset into income for child support purposes. This has not happened.
- [35] Accordingly, I decline to include the capital gain on the sale of the Granville Avenue property as income in 2010. I order, however, that R.M.J.D. report to J.M.D. within 30 days of closing when he purchases a substitute property and provide full financial disclosure of the purchase. He will also in his financial disclosure fully disclose the information about the status and use of those funds. I will deal with reporting requirements more generally later in these reasons.
- [36] In reaching this conclusion I have not disregarded the attack made on R.M.J.D.'s credibility. It was argued, amongst other matters, that R.M.J.D. had given evidence in 2005 that he had no intention of using the Granville Avenue as a primary residence, but deposed that he had lived there in 2006 and claimed it as a primary residence in his tax filings even for 2005.
- [37] Goepel J. had accepted R.M.J.D.'s evidence that he did not intend to live in Granville Avenue when he valued the family assets for the purpose of asset division. I note that R.M.J.D. was not cross-examined on his affidavits. In my view, it would not be appropriate to make adverse findings of fact based on a lack of credibility without R.M.J.D. being given a fair opportunity to respond to the criticisms levelled against him. In any event, the question whether R.M.J.D. did or did not intend to live in the property when he gave evidence or whether it was or was not his primary residence for the periods he claimed is not relevant to his child support obligations. As has been noted, the division of assets dealt with the distribution of family wealth between the spouses, not with their child support obligations. Whether a greater or lesser portion of the capital gain is taxable does not affect the issue whether in principle the capital gain should be taken into income for child support

purposes. In summary, I have not found it necessary to rely on R.M.J.D.'s credibility or lack of credibility in resolving this particular issue.

Was R.M.J.D. entitled to adjust child support payments when his daughter lived with him and his son turned 18?

- [38] Assuming that A.M. remained a child of the marriage, R.M.J.D. was clearly entitled to apply to vary the order stipulating that he pay \$1,000 per month child support. A.M. moved in with him in March 2009, (which is after July 2007, the date after which either party could apply for a variation) and her primary residence was no longer with her mother. In those circumstances, I have no doubt that R.M.J.D. would have been entitled to an adjustment in the child support he paid to J.M.D. to meet his obligations in respect of the two children who continued to live with her.
- [39] On the other hand, if A.M. was a child of the marriage when she moved back to live with her mother, another variation would have been required.
- [40] Similarly, it is quite clear that R.M.J.D. had no right to reduce child support when A.R. turned 18. Any application for a variation would clearly have failed. A.R. turned 19 in 2010 and only then would a variation in child support have been ordered.
- [41] Any variation in child support would have had to take into account whether A,R. remained a child of the marriage and if so what the amount of child support should be.
- [42] Since the parties have defined the issue before me as determining retroactively and prospectively what child support should have been in accordance with Guideline income, I can set to one side the fact that R.M.J.D. failed to apply to vary the order as he should have done and turn directly to the question what that income was for the relevant years.

What is R.M.J.D.'s Guideline Income?

- [43] Determining R.M.J.D.'s Guideline income is complicated by the fact that he did not declare rental income on his tax returns. Indeed, R.M.J.D.'s original estimates of his rental income in his evidence were adjusted on the provision of further financial disclosure ordered by me during the course of hearing. It is also of some moment that R.M.J.D. did not declare the capital gain on the sale of the Granville Avenue property in his 2010 tax return and has had to refile that tax return.
- [44] R.M.J.D.'s primary source of income is from his landscaping business. J.M.D. attacks R.M.J.D.'s statement of his earnings both from landscaping and rental income arguing that he has no credibility with respect to his evidence, has not adequately supported his estimates of expenses respecting the Granville Avenue property and that the financial statements for the landscaping business are unreliable and overstate his expenses and understate the real income derived from the business. In particular, in 2008 the total income reported was \$28,594. This compares to reported income in 2009 of \$47,818 and reported income in 2010 of \$54,465 (excluding the capital gain). J.M.D. argues that if R.M.J.D. was

unable to work as much in 2008 because of a bad back, the business could still have earned more money if he had employed others to work in it. In brief, J.M.D. argues that the reported income for the business does not accurately state R.M.J.D.'s true financial means.

- [45] At the outset it must be said that it is at the very least troubling that R.M.J.D. did not include the rental income from the Granville Avenue property in any of his tax returns and that he did not include the capital gain in his 2010 tax return. On the other hand, if I am to impute income I need to identify an evidentiary basis for concluding that the reported income is inaccurate and for identifying what the imputed income should be taking into account all relevant considerations. Again, R.M.J.D. was not cross-examined on his affidavits. In particular, I was not provided with any evidentiary foundation for concluding that R.M.J.D.'s statement of revenue derived from his business was inaccurate or that the expenses claimed were unreasonable or inflated. All I received was a bare allegation that they were, that R.M.J.D. lacked credibility, and his evidence could not, therefore, be trusted. In any event, it appeared to me that the expenses claimed in relation to the business were of orders of magnitude that one might reasonably expect. On their face they do not appear to be unreasonable. Accordingly, I am not able to find that the financial statements are unreliable or that they had been manipulated to hide income by overstating expenses.
- [46] Similarly, I have not been persuaded that I should impute income to the business in 2008. It appeared to be common ground that R.M.J.D. had been able to work less in 2008 because of a bad back. It was not suggested that he was intentionally under employed. But I was provided with no basis to conclude that R.M.J.D. could have increased the income of the business by hiring employees to do work he could not do. Hiring employees would inevitably increase the expenses of the business. I was given nothing to support the proposition that hired employees in this business would generate more revenue than expenses. Assuming that they would do so is pure speculation. Accordingly, I accept R.M.J.D.'s statement of his income derived from the landscaping business for the years 2008, 2009 and 2010.
- [47] R.M.J.D. also earned rental income from the Granville Avenue property. The parties agree on the revenue generated by the rental property. J.M.D. says, however, that the estimate of expenses is unsupported and that R.M.J.D. or not to be credited with a mortgage expense that he has claimed.
- [48] While I accept that R.M.J.D. has given only estimates of the expenses associated with maintaining the Granville Avenue property, it does not appear to me that those expenses are unreasonable. Those expenses include property tax, utilities, insurance and maintenance. These are the kinds of expenses that one would expect would be incurred in association with a rental property.
- [49] I do, however, have a difficulty accepting the expenses as claimed. It appears that R.M.J.D. on his schedule of expenses has claimed 100% of the property tax, additional property tax, utilities insurance and maintenance incurred in respect of the property. Yet according to his

evidence, R.M.J.D. lived in that property for most of those three years and shared it with the tenant. In my view, in those circumstances, it is appropriate to allocate the expenses between R.M.J.D. and his tenant. In the result, 50% of the expenses claimed in the schedule attached as exhibit "F" to affidavit 4 of R.M.J.D. should be recognized as legitimate expenses to be offset against the rental income. R.M.J.D.'s rental income, therefore, needs to be adjusted accordingly.

- [50] Initially, R.M.J.D. claimed a mortgage expense of \$650 per month. This expense appears to derive from a line of credit secured against the property. On further financial disclosure, R.M.J.D. claimed only interest on the principal amount borrowed. It is common ground, that when R.M.J.D. received the Granville Avenue property after trial, it was mortgage free. I do not accept that the mortgage or the interest costs of the mortgage or line of credit are proper expenses attributable to earning the rental income. Those mortgage expenses cannot be claimed against the rental income.
- [51] In summary, I have excluded the capital gain from R.M.J.D.'s 2010 income for Guideline purposes. I have accepted his evidence of income from his business as the appropriate income for Guideline purposes for 2008, 2009 and 2010. I have identified adjustments to be made to the statement of rental income. The rental income, after those adjustments have been made, is to be included in his income for those years for Guideline purposes. I will leave it to counsel to do the calculations in accordance with these reasons.

Should R.M.J.D. be credited with overpayment of child support after July 2007

- [52] The trial order permitted either party to apply to vary child-support payments after July 2007. R.M.J.D. did not apply to vary those payments, even though he was paying more child support than the Guidelines required. He continued to pay \$1,000 per month until his eldest child came to live with him as a 19-year-old. Only at that time did he act as if circumstances had changed in a way that would justify an alteration to the payments he was making.
- [53] Although the parties have defined the issue before me as determining retroactively and prospectively what R.M.J.D.'s Guideline income is for child-support purposes, I have concluded that R.M.J.D. should not be credited with any child-support overpayment until his eldest child moved in with him in March 2009. Until that time, R.M.J.D. appeared to be content to make the payments of \$1,000 per month even though they exceeded his Guideline income and he was entitled to apply to vary the amount of child support he was required to pay. Having taken that position and conducted himself in that way for almost two years before his eldest child moved in with him, I do not think it would be equitable now to allow him to seek to be credited with any of those "overpayments".

What child support obligations does R.M.J.D. owe to his children during the material years

- [54] I accept that when A.M. came to live with R.M.J.D. in March 2009 he was no longer required to pay child support to J.M.D. in respect of A.M. A.M. took up primary residence with the father. During the time when A.M. lived with R.M.J.D., he was required to pay to J.M.D. child-support in accordance with his Guideline income for two children.
- [55] R.M.J.D. admits that A.M. was a child of the marriage until June 2011 when, as a 21-year-old, she completed a course of business studies at Kwantlen College. R.M.J.D.'s evidence is that A.M. attended the College part-time, worked part-time, did well in the programme and received financial assistance from him including contributing over \$3,000 to her tuition fees.
- [56] As noted by Mr. Justice Schultes in *Pearse v. Pearse*, 2010 BCSC 117, it is generally appropriate to calculate child support for an adult child attending postsecondary education in accordance with s. 3(2)(b) of the Guidelines. This requires the court to take into account the "condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child".
- [57] In this case, A.M. continued to live with one or other of her parents while attending college part-time and earned income from part-time work. Taking into account the contribution that R.M.J.D. has made to tuition fees and other expenses, I conclude that R.M.J.D.'s child-support payable in respect of A.M. should be set at two thirds of the amount that would have been payable in respect of her before she reached the age of majority. Those payments ought to have been made during the period the primary residence was with J.M.D. from the time she turned 19 until June 2011.
- [58] If I have misapprehended the evidence and A.M. did not complete her course at Kwantlen College in June 2011, counsel are at liberty to make a brief submission in writing to clarify the facts so that the date when she ceased to be a child of the marriage can be adjusted.
- [59] The evidence does not persuade me that A.M. remained a child of the marriage after June 2011. In reaching this conclusion I have applied the criteria set out in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C). I have not been provided with adequate evidence that A.M. is currently enrolled in any further full-time or part-time course of studies, what kind of entitlement she would have to receive student loans or other financial assistance, any career plans associated with further education or her current capacity to contribute to her own support.
- [60] R.M.J.D. unilaterally reduced his child support payments again when his second child turned 18. He acknowledges that he was not entitled to do so. There is no dispute that R.M.J.D.'s child-support obligations need to be adjusted to take into account his failure to pay child support in respect of A.R. until he turned 19.

- [61] I am persuaded that A.R. remained a child of the marriage after he turned 19. Beginning in January 2011 A.R. started an introductory heavy duty mechanic course at BCIT. That course lasted seven months. R.M.J.D. contributed \$2,500 to his tuition fees. Currently, he is enrolled in a two-year heavy-duty mechanics programme in Fairview College in Alberta. He moved to Alberta at the end of August 2011.
- [62] I have not been provided with any information about student loans or financial assistance or A.R.'s ability to earn income. It does seem, however, that this course is a useful one and fits within reasonable and appropriate plans to become qualified for a secure and well-paid job.
- [63] I presume that taking a course in Alberta will involve additional expenses over and above taking a course and living at home.
- [64] In the circumstances, A.R. should receive child-support in accordance with R.M.J.D.'s guideline income.
- [65] R.M.J.D. is prepared to contribute to special or extraordinary expenses for all of his children, including A.M., in proportion to the relative incomes of both parents. Based on that concession I will order accordingly.
- [66] It is common ground that J.M.D. is ill. Even though she was ill in 2010 she did earn income. It is unclear whether J.M.D. will continue to earn income or how much income in 2011. I have concluded that I cannot assume that J.M.D.'s income in 2011 will be similar to her income in 2010. Accordingly, I order that R.M.J.D. initially finance special or extraordinary expenses. J.M.D. is required to disclose her income for 2011 in accordance with the terms of the trial order, at which time R.M.J.D. will be entitled to an adjustment for any overpayment he has made.

Future Financial Reporting

- [67] Many of the difficulties between the parties appear to derive from an inability to communicate generally, but specifically with respect to financial matters. It will surely assist the parties if they find a means to exchange financial information in a stress free manner. I suggest that some effort be made to find a way for information to be shared between them. It is important, however, that financial information be exchanged. The parties are ordered to exchange financial information in accordance with the terms of the trial order.

Conclusion

- [68] I have attempted in these reasons to resolve the various issues raised by the parties and to identify the basis of the calculation of R.M.J.D.'s Guideline income during the relevant period. I request counsel undertake the necessary calculations, based on these reasons, so that a form of order can be drawn for my review.

[69] In my view, success has been shared on this application and each party should bear their own costs.

"Harris J."

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