

CANADA / JUDGMENT

J.N.G. v. S.C.M.

2024 BCSC 1717

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Supreme Court of British Columbia

DECIDED

17 September 2024

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2024 BCSC 1717 J.N.G. v. S.C.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.N.G. v. S.C.M.,

2024 BCSC 1717

Date: 20240917

Docket: E134433

Registry: Kelowna

Between:

J.N.G.

Claimant

And

S.C.M.

Respondent

Before: The Honourable Justice Majawa

Reasons for Judgment

The Claimant, appearing in person:

J.N.G.

The Respondent, appearing in person:

S.C.M.

Place and Dates of Trial:

Kelowna, B.C.

August 12-16 and 19-23, 2024

Place and Date of Judgment:

Kelowna, B.C.

September 17, 2024

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OVERVIEW

- [1] This is a high conflict family law matter in which parenting arrangements, property division, and child and spousal support were all at issue when the trial commenced. After the claimant concluded her case, the respondent advised the Court that he was prepared to concede on a number of matters. Ultimately, the claimant and respondent entered into a consent order before me on August 22, 2024, in which the respondent conceded his position with respect to the division of property and abandoned his claim for spousal support. The parties further agreed that assets and debts in their own names at the time of trial would remain their individual responsibilities.
- [2] Consequently, the remaining issues for this court to decide are in respect of the parenting arrangements for the parties' now three and a half-year-old child, the amount of retroactive and prospective child support (including a determination of the parties' incomes), and the role that a parenting coordinator will play in assisting the parties going forward.
- [3] As will be discussed in greater detail later in these Reasons, I have concluded that it is appropriate to appoint a parenting coordinator to assist the parties in implementing the parenting arrangement and making certain determinations. I have also concluded that it is in the child's best interests that each parent has equal parenting time, that the parties each have the authority to exercise the majority of the parenting responsibilities while the child is in their care, and that disputes will be determined by a parenting coordinator. However, I have determined that the claimant shall have decision making authority in respect of which elementary school the child will attend if the parties are unable to agree. I have also determined that parenting exchanges are to occur at the daycare of the claimant's choice but that the respondent is free to have the child attend the daycare of the respondent's choice during his parenting time.
- [4] I have also made determinations with respect to the parties' incomes and child support obligations.

BACKGROUND FACTS

- [5] At the time of trial, the claimant was 37 years old and the respondent was 34 years old. The parties' relationship was relatively short. They began dating in March 2019, commenced living in a marriage like relationship on September 1, 2019, and separated on June 19, 2022. By the time of trial, the parties had been separated for almost the same amount of time in which they were in a marriage-like relationship.
- [6] On February 7, 2021, the parties' son, R.M., was born. At that time, the parties lived in a condominium apartment in Kelowna that was purchased by the claimant before the parties' relationship began. At the time of trial, R.M. was approximately three and a half years old.
- [7] The parties' relationship was quite volatile from near its beginning. The claimant alleges that the respondent engaged in three specific instances of physical violence against her during the relationship. She also alleges that the respondent verbally and emotionally abused her on numerous occasions throughout the relationship and on certain occasions since the parties separated, particularly during parenting exchanges.
- [8] The respondent denies perpetrating any acts of physical, verbal, or emotional abuse upon the claimant. He acknowledges that the relationship was volatile and that they argued on numerous occasions. The respondent says that the claimant is responsible for the volatility of the relationship because he alleges that she has an alcohol abuse problem.
- [9] At the time the parties began their marriage-like relationship, both worked full-time. The parties agreed that they would both take some time off following the birth of their child. The claimant took approximately one year of maternity leave following the birth of their son. She returned to work in late February 2022. The respondent began his parental leave in January 2022 and it concluded in September 2022 when he resigned from his employment before he returned to work. I will discuss the parties' employment history in more detail later in these Reasons during my consideration of their respective incomes and child support obligations.
- [10] In the fall of 2021, the parties decided that the claimant would sell her downtown Kelowna condominium and they would purchase a new home in West Kelowna in their joint names (the "West Kelowna Home"). The significant down payment required for the purchase of the new home came from the claimant's proceeds of the sale of the downtown Kelowna condominium, other savings that she had acquired, and a substantial mortgage. Whether or not the parties had agreed that the down payment on the West Kelowna Home would be the claimant's excluded property was initially a significant issue in this litigation. However, as mentioned earlier, more than halfway through the trial, the respondent agreed that any interest he had the West Kelowna Home would be transferred to the claimant.

- [11] There was a gap of approximately eight weeks between the time the downtown Kelowna condominium sale closed at the end of January 2022, and the new home in West Kelowna would be ready for occupancy and completion in early March 2022. Consequently, the parties decided to live with the respondent's mother and stepfather in Summerland (the "Summerland Home") beginning January 30, 2022.
- [12] Shortly after the parties moved into the Summerland Home, an incident occurred on February 1, 2022. Much time was spent at trial providing evidence about what occurred on that evening. At this point, it is sufficient to say that the events of that evening resulted in a short period of separation for the parties; the claimant moved to her aunt, T.K.'s, house (a short distance from the yet to be completed West Kelowna Home), while the respondent remained with his family at the Summerland Home.
- [13] The parties reconciled and moved into the West Kelowna Home on or about March 12, 2022, when construction was completed and the purchase closed. During their separation between February 1, 2022, and March 12, 2022, the parties shared parenting of R.M. relatively equally; although the respondent had slightly more parenting time during the three weeks that the claimant returned to work before they moved into the West Kelowna Home.
- [14] During the period between March 12, 2022, and the parties' final separation on June 19, 2022, the respondent was on parental leave and the claimant had returned to work.
- [15] The parties separated on June 19, 2022, following an incident at the West Kelowna Home that resulted in the police attending at the insistence of the claimant. Given that the respondent was on parental leave at the time and the claimant was scheduled to work the next day, she agreed to have the respondent take R.M. with him to the Summerland Home. Her understanding was that the respondent would return R.M. to the West Kelowna Home the next day. However, this did not occur and the respondent did not indicate when he would return R.M. despite many requests by the claimant over the following days.
- [16] Ultimately, the claimant commenced this family law action and sought the return of R.M. on a without notice ex parte application that was heard and granted on June 27, 2022. Unbeknownst to the claimant at the time, the respondent commenced a family law action in the Penticton Registry of this court on or about June 24, 2022, and at the same time filed a certificate of pending litigation against the West Kelowna Home. The respondent returned R.M. to the claimant in accordance with the order. Since then, the parties have generally shared parenting time of R.M. equally.
- [17] In the approximately two years since the parties separated, a number of applications and cross applications have been brought by the parties. The trial for this matter was originally scheduled to commence in October 2023 but was adjourned due to lack of sufficient court time having been set aside.

CREDIBILITY AND RELIABILITY

[18] Justice MacDonald reviewed the law on assessing the credibility of a witness in *M.D. v. B.D.*, 2022 BCSC 1707 [M.D.]. At para. 6, citing *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414, MacDonald J. enumerated the factors to consider when assessing credibility, including:

1. the witness's ability and opportunity to observe events;
2. the firmness of the witness's memory;
3. the witness's ability to resist the influence of interest to modify their recollection;
4. whether the witness's evidence harmonizes with independent evidence that has been accepted;
5. whether the witness changes their testimony during direct and cross-examination (or between examination for discovery and trial: see *Nearing v. Sauer*, 2015 BCSC 58 at para. 32);
6. whether the witness's testimony seems unreasonable, impossible, or unlikely;
7. whether a witness has a motive to lie; and
8. the demeanour of a witness generally.

[19] I have made my assessment of the witnesses with reference to the factors set out in the above-noted authorities.

[20] I find the claimant to be a credible and reliable witness. Her memory was firm, did not change during direct and cross-examination, and harmonizes with the independent evidence that I have accepted. On a number of occasions, the claimant gave evidence, and acknowledged behaviour, that did not paint her in a positive light, such as acknowledging her role in some of the parties' verbal arguments and her recognition of the role that her consumption of alcohol sometimes played in those arguments. The claimant demonstrated an excellent and detailed recall of events and her evidence did not change through the course of the trial. The claimant reasonably conceded when she was unable to recall a particular detail. Although the respondent made some attempts to do so, the claimant was not impeached by her evidence at discovery on any point.

[21] The claimant called a number of witnesses to provide evidence. In general, I found the witnesses called by the claimant to be both credible and reliable. M.W., a friend of the claimant, provided detailed evidence about the events of the evening of May 30, 2020, in regards to an alleged incident of family violence. As will be discussed later, I accept her testimony about the events of that evening including her evidence that she witnessed the respondent push the claimant to the ground during an argument. Her evidence was consistent with the probabilities affecting the case and she did not waver on cross-examination.

- [22] R.B., a business associate and friend of the claimant, also provided evidence in respect of the events of that evening. I have treated her evidence with caution given that the affidavit she swore earlier in these proceedings conflicted with her testimony at trial in respect of whether she saw the respondent push the claimant to the ground. However, at trial, she readily conceded that her memory on the stand was not entirely clear. I accept her evidence with respect to the events of that evening leading up to the alleged physical assault; however, I have not considered her evidence in coming to my conclusions about whether the respondent did assault the claimant that evening.
- [23] The claimant's aunt, T.K., and the claimant's friend A.W. also provided evidence. Their evidence was not undermined during cross-examination and was consistent with the probabilities affecting the case.
- [24] The claimant also called D.W., the Chief Administrative Officer of the respondent's former employer. While the respondent urges me to find that D.W. provided false testimony in respect of the conditions of his employment, her evidence was consistent with the documents in effect at the relevant time. Other than the suggestion that the D.W.'s evidence conflicted with things the respondent was told by others, none of those other individuals were called to testify and the respondent offered no cogent reasons as to why I should not accept D.W.'s evidence.
- [25] I have significant concerns with the respondent's credibility and reliability. On a number of occasions, the respondent's evidence at discovery conflicted with the evidence provided at trial. For example, at discovery the respondent acknowledged having had multiple drinks at a particular dinner during which he alleged the claimant was extremely intoxicated. At trial he provided evidence that he only had one drink at that dinner. When faced with this contradiction, he testified that he perhaps had one or two drinks. On more than one occasion, the respondent acknowledged the testimony he provided at discovery was incorrect but provided no cogent explanation as to why his discovery evidence was mistaken and why his evidence at trial was correct.
- [26] I found the respondent would attempt to provide detailed evidence of conversations that occurred between the parties based upon his position in the litigation as opposed to his memory. For example, the respondent first testified on cross-examination that he could not recall, and did not have a memory of, anything said in a particular conversation that occurred on February 14, 2022, at the claimant's aunt's house while the parties were in a hot tub. When particular statements were later put to him by the claimant as to what was discussed that evening, the respondent provided detailed denials of what was put to him and provided evidence of said the conversation only moments after testifying that he had no memory of that conversation. When asked about this, the respondent conceded that the detailed answers he provided were consistent with what "he would have said". The respondent's willingness to provide unqualified evidence of what was said in conversations that he has no memory of his troubling.

- [27] The respondent also provided internally inconsistent evidence by contradicting testimony that he himself provided earlier. For example, in his evidence about the events of June 26, 2021, he initially testified that he telephoned his sister in order to get her assistance in resolving an argument between him and the claimant and so that neither he nor the claimant would call the police. He testified that he was prepared to call the police at the time he called his sister because the claimant was holding their child in an unsafe manner. In a later text message exchange with his sister about the events that occurred earlier that evening, the respondent wrote that the claimant had been prepared to call the police before his sister had returned to help diffuse the situation; however, he did not mention in the text message that he had also been prepared to call the police. When this was pointed out to him, the respondent testified that he was in fact not going to call the police that evening because he was scared of what would happen if they had arrived at the residence. He explained the inconsistency in his testimony by saying that he must have misspoken in his earlier testimony.
- [28] Although the parties were able to come to an agreement with respect to the division of property, the evidence provided by the respondent with respect to the existence of an oral agreement about the funds the claimant used to purchase the family home was simply not credible. Despite numerous text messages in which the respondent acknowledged the existence of an agreement respecting the purchase of the family property and the funds used by the claimant for the down payment, the respondent insisted that no such agreement was reached or that a few days after the text messages were sent, the parties had another verbal discussion in which he says the claimant agreed not to pursue a cohabitation agreement that would protect her down payment. Given the conflict in the parties' relationship at the relevant time, and the claimant's clear desire to protect her investment over the course of the many months leading up to the close of the purchase of the West Kelowna Home, it is inherently unbelievable that she would abandon this position moments before closing on the purchase of the house.
- [29] Finally, the respondent testified that video evidence existed that would support his assertion that the claimant was not telling the truth in respect of his alleged aggressive and demeaning behaviour on a number of occasions. However, the respondent did not tender any of the videos he referenced. Given my concerns with his credibility and reliability, I infer that if those videos exist, they would not assist in supporting his version of events.
- [30] I did not find the evidence of D.T., a good friend of the respondent's sister, to be of much assistance in resolving the issues before me. Her personal opinion of whether it was appropriate for the claimant to share certain details of her separation with the respondent is not relevant. Contrary to the suggestion by the respondent, D.T. did not testify that the claimant was intoxicated on the occasion that they had the discussion at issue.
- [31] I found that the respondent's sister, A.P. provided evidence tailored to support the respondent's allegations that the claimant has an alcohol abuse problem. For example, during her evidence in chief, A.P. essentially testified that on every occasion at which she

interacted with the claimant, the claimant was extremely intoxicated. She testified that she could not remember a single occasion during which the claimant was not drinking alcohol. I do not accept this testimony. As pointed out to A.P. on cross-examination, the claimant was pregnant for a considerable period of time that they interacted. No allegation has been made that the claimant was drinking or abusing alcohol during her pregnancy. Moreover, A.P. later acknowledged that there were a number of occasions during which the claimant was present at some family dinners and during which she did not drink alcohol. Furthermore, I give no weight to two of the specific occasions that A.P. testified about because neither of those occasions were put to the claimant.

- [32] I did not find L.A., the respondent's mother, to be a particularly reliable witness. She equivocated in respect of her knowledge of when the respondent commenced his family claim or sought legal advice, despite the fact that she acknowledges lending him the money to seek such advice. Like the respondent and A.P., L.A.'s recollection of the specifics of the claimant's alleged excessive alcohol consumption on particular occasions stands in stark contrast to the memory of their own drinking habits on that same day and of the respondent's. This is consistent with their attempts to paint the claimant as an abuser of alcohol.
- [33] In conclusion, where the evidence of the respondent conflicts with that of the claimant or the documentary evidence, I prefer the claimant's evidence and the documents.

PARENTING TIME AND RESPONSIBILITIES

The Parties' Positions

- [34] The claimant seeks an order that the parties continue to equally share parenting time with R.M. on the current 2-2-5-5 schedule. Given the level of conflict between the parties, the claimant seeks that she be provided with the authority to exercise all the parental responsibilities provided for in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], pursuant to the Joyce Model. She requests that parenting exchanges are to take place at the Grasshoppers Childcare Centre in Kelowna as a means of reducing the conflict that has occurred between the parties during exchanges.
- [35] As I understand his position, the respondent does not fundamentally disagree with equally shared parenting time. However, the respondent maintains that such equal parenting time should not be in place until and unless the claimant undergoes counselling to address her alleged substance abuse issues, which the respondent alleges impacts her capacity to parent R.M. Consequently, the respondent seeks an order that R.M. be in his sole care until the claimant's alleged substance abuse issue has been "resolved". He also seeks an order that he be provided sole authority to exercise parental responsibilities listed in s. 41 of the FLA. When the claimant's parenting time resumes, the respondent suggests that parenting time exchanges continue to occur in Peachland, BC, which is approximately the midpoint between the West Kelowna Home and the Summerland Home.

The Applicable Law

- [36] Given that the parties were not married, orders for parenting time and responsibilities are sought pursuant to the FLA.
- [37] Pursuant to s. 37(1) of the FLA, I am to consider only the best interests of R.M. when making an order for parenting time and responsibilities. Subsection 37(2) sets out a non-exhaustive list of factors that the court must consider in determining the best interests of the child:

Best interests of child

37 (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [38] Pursuant to s. 37(4), a parent's conduct may only be considered in making a parenting order if that conduct substantially affects a factor set out in s. 37(2), and only to the extent that it affects that factor. Thus, a parent's use of alcohol could be a factor in making a parenting order if that parent's use of alcohol has a substantial effect on, for example, the parent's ability to exercise his or her parental responsibilities.

[39] Family violence is a relevant consideration in making a parenting order. In considering the impact of family violence on the parenting arrangement, the court is to consider the following pursuant to s. 38:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[40] Parental responsibilities are enumerated in s. 41 of the FLA:

Parental responsibilities

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;

- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
 - (h) giving, refusing or withdrawing consent for the child, if consent is required;
 - (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - (j) requesting and receiving from third parties health, education or other information respecting the child;
 - (k) subject to any applicable provincial legislation,
 - (i) starting, defending, compromising or settling any proceeding relating to the child, and
 - (ii) identifying, advancing and protecting the child's legal and financial interests;
 - (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
- [41] Sections 39 and 40 of the FLA provide that each parent of a child is presumptively that child's guardian and that unless the court otherwise orders, each guardian may exercise the parental responsibilities in consultation with the child's other guardian. Under ss. 40(3) and (4), the court may allocate some or all of the parental responsibilities and in doing so, it is not to be presumed that parental responsibilities should be allocated or shared equally, nor should it be presumed that the guardians should make decisions separately or together. Pursuant to s. 43, a child's guardian is to exercise their parental responsibilities in the best interests of the child.

Analysis

Summary of Conclusions on Parenting Arrangements and Responsibilities

- [42] I considered the requirements set out in the FLA, including each of the factors set out in s. 37(2). I have carefully considered the respondent's allegations of the claimant's alcohol abuse and his position that her use of alcohol impacts her ability to parent R.M. I have found the respondent's allegations to be entirely without merit. I have concluded that it is in the best interests of R.M. for the parties to equally share his parenting on the current 2-2-5-5 schedule.
- [43] I have also concluded that the parties will have the authority to exercise the majority of the parenting responsibilities while R.M. is in their care and that a parenting coordinator will resolve any disputes. I have concluded that the claimant will decide where R.M. will attend elementary school if the parties are unable to agree.
- [44] Given the level of conflict between the parties, and particularly in consideration of the conflict that has manifested during parenting exchanges, I have decided that exchanges will occur at the daycare chosen by the claimant, which is currently Grasshoppers Childcare Centre in Kelowna. However, the respondent is free to enroll R.M. at the daycare of his

choosing during his parenting time as long as the exchanges occur at the daycare of the claimant's choice, or at a location that the parties can otherwise agree upon, with or without the assistance of the parenting coordinator.

Parenting Time and Responsibilities

[45] In coming to my conclusion with respect to parenting time, I have considered only what is in the best interests of the child with reference to the factors in s. 37(2) of the FLA. I will comment on the factors that are particularly relevant to the case at hand.

Family Violence

[46] The existence of family violence is a factor to be considered under s. 37(2) of the FLA with reference to the factors listed in s. 38. In the circumstances of this case, the Court must pay particular consideration to how family violence relates to a party's ability and willingness to cooperate with the other parent on issues affecting R.M.

[47] The claimant alleges that the respondent was physically abusive to her on three particular occasions during the relationship. There is no allegation that the respondent has been physically violent towards R.M. either during or after the relationship and there is no allegation that the respondent has been physically violent towards the claimant since the parties separated. However, the claimant alleges that the respondent was verbally and emotionally abusive during the relationship in the presence of R.M. and that this abuse has continued, to an extent, since separation; particularly during parenting exchanges when the parties have direct contact with each other.

[48] The respondent denies that he has ever been physically, verbally, or emotionally abusive to the claimant at any time. He submits that it was the claimant who was verbally abusive to him during the course of the relationship. He acknowledges that there has been conflict at parenting exchanges but denies that he used abusive language and says that conflict has reduced over the last one month or so.

[49] It is clear from the evidence before me that the parties' relationship included elements of volatility from an early point. I have no trouble in finding that both parties have yelled at each other and said demeaning things to the other during a number of heated arguments throughout the course of their relationship. However, I do find that the respondent is the main perpetrator of the verbal abuse during the relationship and since separation. As discussed earlier, I have significant concerns with the respondent's credibility. I do not accept his denial that he has called the respondent derogatory and demeaning names in the presence of R.M. on a number of occasions. In particular, I accept that the respondent screamed profanities at the claimant during their argument on June 19, 2022, and that this was done in the presence of R.M. The claimant's friend A.W., confirmed that she heard the respondent doing so on that day on the other end of the phone call from the claimant who had contacted her for assistance in calling the police.

- [50] I accept the claimant's version of the events of June 26, 2021. On that evening, the parties returned from a day of wine tasting and a pizza dinner with friends to celebrate the claimant's birthday. The respondent's sister and brother-in-law babysat R.M. until the couple returned to the downtown Kelowna condominium. R.M. was approximately four months old at the time. The parties got into an argument in the car after dropping their friends off and shortly before arriving home. After they arrived home, the respondent's sister and brother-in-law left and the argument between the parties continued in R.M.'s presence. I accept that there was an incident of physical violence that evening wherein the respondent used his shoulder to violently push the bathroom door open where the claimant had gone to remove herself from the argument. The door slammed into the claimant, knocked her to the floor, and the respondent got on top of her and pinned her down. He eventually let her up. Shortly thereafter, the respondent contacted his sister to return to help defuse the situation and in a follow-up text message conversation with his sister, he referenced the fact that the claimant had been prepared to call the police that evening.
- [51] The parties separated on June 19, 2022, following an incident that occurred at the West Kelowna Home on June 18 and 19. Once again, I accept the claimant's version of events. On June 18, 2022, the respondent and claimant got into an argument in the presence of R.M. During that argument, the respondent yelled and screamed various demeaning and degrading names at the claimant in the presence of R.M. who was then approximately one and a half years old. Following the argument, the respondent took R.M., with the claimant's consent, to spend the night with him at his family's Summerland Home. The understanding was that he would return with R.M. to the West Kelowna Home at 5:00 p.m. on June 19, 2022.
- [52] On June 19 at approximately noon, the respondent returned to the West Kelowna Home with R.M. The claimant had spent the night before at a friend's house helping them move in. She and her friends had some alcoholic beverages and she decided to stay the night. When she returned, she decided to have a nap considering that she did not expect the respondent and R.M. to return until later that day. Upon his return, the respondent found the claimant napping in her bed and he woke her up by yelling obscenities in her face and demanding to know where she was the night before. Not satisfied with her response, he again hurled a number of insults at the claimant and threatened to ruin her life. At the beginning of this altercation, the respondent was holding R.M. in his arms. At one point he put R.M. on the bed, yelled a demeaning name at the claimant and struck her in the face with a paper lunch bag that was nearby.
- [53] The respondent then picked up R.M. and left the bedroom while continuing to scream and yell at the claimant. The claimant called her friend A.W. for her assistance. During that call, A.W. could hear the respondent yelling and screaming at the claimant from the other end of the phone. A.W. called the police and they arrived a short time thereafter.
- [54] I heard a significant amount of evidence in respect of an incident that occurred on May 30, 2020, when the claimant and respondent attended a celebration for M.W.'s birthday at the Okanagan Beach Club. The relevance of this incident to the decision I must make with

respect to the child's parenting arrangement is marginal as this incident occurred before R.M. was born. However, it does form part of the constellation of behaviour that leads me to conclude that the level of conflict between the parties has been on going for such a period that it does have an impact on the ability of the parties to cooperate in the child's best interests. To the extent that findings of what occurred that evening are relevant, I accept the claimant's version of events. In particular, I accept that the respondent shoved the claimant to the ground as opposed to the claimant having slipped.

- [55] M.W. was present during the altercation and witnessed the respondent push the claimant to the ground. She did not waver in cross-examination and provided details consistent with the probabilities of the realities of the situation that evening. Although the respondent says that there was another witness to the altercation that would have supported his version of events, that individual was not called to testify. The respondent's purchase of a replacement cellular telephone for the claimant shortly after the incident is consistent with the claimant's version of events that the respondent threw her telephone into the woods and it was unable to be found. I do not accept the respondent's story that the claimant's telephone was lost when she slipped and fell, and that he purchased this replacement telephone simply to try to make the claimant happy and not because he was responsible for the loss of the cellular phone.
- [56] There have been a number of altercations between the parties at parenting exchanges that currently occur at a neutral midpoint between the residences. I accept that there has been incidents of name-calling and rude gestures at these exchanges in the presence of R.M.
- [57] There have been no allegations of physical violence since the parties separated more than two years ago and the claimant does not allege that the emotional and physical violence that occurred during the relationship has impacted the respondent's ability to parent or that it should impact his parenting time. Given the frequency and nature of the abuse, and the time that has passed since the last incident of physical violence, I do not find that the incidents affect his ability to exercise his parenting time. However, that does not diminish the seriousness of the incidents.
- [58] There were numerous incidents of verbal abuse in front of R.M. The courts of this province have held that demeaning remarks about the other parent in the children's presence is family violence and causes emotional harm: *K.W. v. L.H.*, 2018 BCCA 204, citing *K.R. v. J.D.*, 2017 BCSC 182 at para. 17. While these incidents have certainly diminished since separation, I am concerned about how the respondent may speak about the claimant in the presence of R.M. when the claimant is not there to witness it. Given the negative effect of demeaning comments made by one parent about the other, it is imperative that the parties do not speak negatively about the other in front of the child either in or not in the presence of the other parent. I will make conduct orders to this effect.

- [59] I have also concluded that the nature of the family violence, and in particular the ongoing verbal abuse perpetrated by the respondent, is a significant factor in determining that it would not be appropriate to require the parties to cooperate without assistance in many matters that effect the child.

Alleged Alcohol Abuse

- [60] The respondent alleges that the claimant has a history of substance abuse with respect to her use of alcohol. In his view, the claimant should not have parenting time with R.M. until she has received and successfully completed counselling to address this alleged issue. In his trial brief, the respondent sought an order that the claimant would be required to undergo scheduled and random drug testing each day three times a day for a period of one year, and that she would be required to use an ignition locking device that required a breathalyzer sample to start her vehicle. He did not pursue this relief in his closing submissions.
- [61] In his trial brief, the respondent also referenced an alleged prescription medication abuse issue. This, the respondent says, was in respect of the claimant's use of antianxiety medications. This was not pursued in submissions and there was no evidence whatsoever that the claimant had abused any prescription medications. There was no evidence that the claimant took any antianxiety medication for more than a few weeks on the recommendation of her physician. In any event, the respondent did not explain how the mere use of antianxiety medication would be an appropriate factor to consider when determining R.M.'s parenting arrangement.
- [62] The claimant denies that she has an alcohol abuse problem, or any substance abuse problem, particularly one that affects her ability to exercise her parenting responsibilities or that should impact on her parenting time with R.M.
- [63] As stated in the overview, I find there is no merit to the respondent's allegations of the claimant having a substance abuse issue that would impact her parenting time. There is no doubt that both parties engaged in drinking alcohol on numerous occasions throughout their relationship. There is also no doubt that the claimant has acknowledged that her use of alcohol at certain times was a contributing factor to the arguments that the parties got into. However, I do not find that R.M. has ever been endangered due to the claimant's use of alcohol and the evidence before me does not suggest that the claimant has a substance abuse issue with alcohol that affects any other areas of her life.
- [64] I heard considerable evidence throughout the course of the trial with respect to the respondent's characterization of the claimant's drinking habits. I also heard evidence of the respondent's mother and sister's characterization of the claimant's drinking habits. In my view, the respondent and his sister have exaggerated the claimant's consumption of alcohol to aid in their narrative. Furthermore, many of the incidents referred to by the respondent involved consuming alcohol when R.M. was not present. And moreover, many of the incidents involved both parties consuming alcohol. However, the respondent consistently

downplayed, or gave vague evidence in respect of his own drinking habits during those occasions. Neither T.K. (the claimant's aunt), nor any of the other witnesses who testified had any concerns with the claimant's drinking habits. While the respondent claims that there were occasions when the claimant was "fall down drunk" when they were out with other individuals, none of those individuals were called to testify and corroborate his testimony.

- [65] The evidence is not consistent with the respondent's professed concern for the claimant's health and safety arising from his allegations of substance abuse. For example, the respondent says that he tried to get the claimant to obtain assistance with her alleged drinking problem on a number of occasions. He could not explain why there were no text messages that would supported his version despite the fact that voluminous text messages were submitted into evidence. In fact, the text messages tell a different story. For example, shortly before the parties separated, the respondent texted the claimant while he was out shopping and offered to pick up some alcohol for her from the liquor store. He went further and made numerous suggestions as to what he should get for her and checked in as to what she wanted when he got to the liquor store. No mention is made of a supposed alcohol problem that he was concerned about. If he was truly concerned, his actions on this and other occasions are not consistent with such concern.
- [66] During closing submissions, the respondent acknowledged that he has no evidence of the claimant consuming alcohol in the presence of R.M. since August 2022. On August 18, 2022, after a parenting exchange, the respondent called the police to report that he smelled liquor on the claimant's breath during the parenting exchange and he was concerned given that the claimant was driving with R.M. in the car. M.W. had attended the parenting exchange with her then boyfriend and the claimant. Both the claimant and M.W. denied having consumed alcohol that day as they were on the way to the beach with their children.
- [67] I do not accept that the claimant was drinking alcohol that day, nor do I accept that the respondent actually smelled alcohol on her breath. Despite testifying that he called the police because he was concerned for the safety of R.M., he could provide no adequate explanation as to why he waited over an hour to call the police to report his concerns that day. I do not believe his explanation that he "froze" and did not know what to do. It simply defies common sense that the respondent would not immediately phone the police if he was truly concerned that the claimant was driving with their son while intoxicated.
- [68] The claimant attempted to subpoena the RCMP officer who ultimately attended at her residence to testify about the events of that day and the results of his investigation, but she was unable to serve him with the subpoena as he was on leave from the force. While I cannot take the contents of his report for their truth, it is clear that no further action was taken in respect of the respondent's call to the police that day. In my view, the respondent's decision to phone the police that day had nothing to do with his concerns for the safety of R.M. Rather, it was part of the respondent's harassment of the claimant post separation and the early stages of his litigation narrative that the claimant has an alcohol abuse problem.

- [69] When asked by the court during closing submissions for his position as to when R.M. was put in some sort of danger as a result of the claimant's alleged drinking problem, the respondent stated that the only such incident was on June 26, 2021. I mentioned this incident earlier in my discussion of family violence. During this incident, the respondent alleges that the claimant was very intoxicated after returning from dinner that evening and that she lunged at the respondent's sister, A.P., and threatened to fight her, all while holding R.M. He also says that the respondent was holding R.M. in an unsafe manner by not providing him with proper head support. A.P. provided evidence consistent with the respondent in this respect.
- [70] I do not accept the respondent's and A.P.'s evidence with respect to what occurred that evening. Given my concerns with his credibility and his demonstrated tendency to exaggerate and distort the claimant's drinking habits, I do not accept the respondent's allegation that the claimant was extremely intoxicated that evening or that the claimant tried to fight the respondent's sister. Despite a detailed text message conversation between the respondent and his sister shortly following the events of that evening, no mention is made of the claimant having attempted to fight or lunge at A.P. No mention is made of the claimant having been holding R.M. in an unsafe manner.
- [71] In any event, even if the events of June 26, 2021, occurred in a manner more consistent with the respondents and A.P.'s version, it would be the only isolated incident which the respondent could point to that could be said to impact upon my decision with respect to parenting arrangements. However, it is important to note that the night in question was more than three years ago. And as the respondent acknowledged, other than the incident in August 2022, which I have found did not occur as he said, he has no evidence that the claimant has endangered or even consumed alcohol in the presence of R.M. since separation.
- [72] While there may have been occasions that the claimant's consumption of alcohol has a negative impact on the parties' relationship, it can in no way be said that the claimant's use of alcohol substantially affects any of the factors set out in s. 37(2) as required by s. 37(4). Not all conduct bears directly on a person's capacity to parent the child. I find the words of Justice Goepel, as he then was, in *K.D.P. v. A.R.K.*, 2011 BCSC 1085, to be particularly apropos to the current situation:
- [1] No parents are perfect. All have flaws of one kind or another. If families stay together, except in those rare circumstances in which a child is found to be in need of protection, the state and the courts allow imperfect parents to raise their children as best they can. The children, in most cases, are no worse for wear for the experience.
- [2] If families separate, however, and issues of custody and access arise, in the guise of determining the best interests of the child, a parent's flaws of character and conduct are put under a microscope. In such circumstances, care must be taken not to lose sight of the strengths that a party brings to the challenge of raising a child.

[73] Tellingly, the respondent could point to no other concerns with respect to the claimant's parenting ability.

Other Relevant Factors

[74] Given my conclusion with respect to the lack of merit in the respondent's allegations of the claimant's alcohol abuse issues, it follows that the parties should continue to share equal parenting time of R.M. as they have been since separation. However, there are other relevant factors to consider particularly in respect of the allocation of parental responsibilities and the way in which parenting exchanges will occur going forward.

[75] In my view, the nature and strength of both parent's relationship with R.M. is such that a shared parenting regime is appropriate. Moreover, such a shared parenting regime will continue to foster relationships with each of the parties immediate and extended family. A shared parenting regime is also consistent with the history of R.M.'s care. The parties have shared parenting time equally since separation approximately two years ago. Before separation, both played significant roles in R.M.'s life while working and while on parental leave. I have no concerns with either party's capacity to parent R.M.

[76] I have significant concerns with the appropriateness of the parenting arrangement that would require the parties to cooperate on issues affecting R.M. The evidence has demonstrated that requiring cooperation has, and will likely continue to, increase risks to the well-being of R.M. by continuing to expose him to the conflict between the parties.

[77] I have already discussed the nature of the verbal abuse perpetrated by the respondent in the past and that has continued to an extent during parental exchanges which, in my view, has a significant impact on the appropriateness of requiring the parties to cooperate. There are also examples of the respondent's inability to cooperate, such as his failure to advise the claimant as to what daycare he had enrolled R.M. in during his parenting time in October 2022. The respondent refused to provide this information until the court ordered him to do so in May 2023. Conversely, in July 2022, less than a month after separation, the claimant notified the respondent by email that she had been offered a full-time daycare position for R.M. but that she needed his consent to enrol him. The respondent did not provide consent and provided no cogent reason for his failure to do so.

[78] Immediately following the parties' separation after the altercation on June 19, 2022, the respondent removed R.M. from the home and refused to return him until the claimant obtained an order from the Court nine days later. During this time, the respondent refused to give the claimant any indication of when R.M. would be returned. Despite this, the claimant demonstrated her desire to work together in parenting R.M. when she suggested that they engage in an equal parenting arrangement a mere a few days after R.M. was returned to her.

- [79] Originally, the respondent's litigation position was that the claimant's employment interfered with her ability to parent R.M. At times he suggested that the claimant was a workaholic in addition to being an alcoholic. He did not seriously pursue this argument during submissions and he eventually conceded that her work schedule does not impact her ability to parent R.M. in their current equally shared parenting arrangement. In any event, I have no trouble in finding that the claimant's employment does not interfere with her ability to parent R.M. While there is some travel in her job, much of it is optional and can be arranged during times when she does not have R.M. in her care. In fact, the claimant's employment is flexible enough that the claimant is able to spend a significant amount of time with R.M. while she is working and he is in her care. On the evidence before me, there is no reason that the claimant's success in her career should negatively impact her parenting time.
- [80] The conflict in this relationship post-separation is such that the parties have come to exchange R.M. at a location that has security cameras on-site. Each parent brings a witness with them to the exchange and for a time the parties made video and/or audio recordings of the other's behaviour. There have been incidents of verbal abuse and rude gestures during exchanges. Although the respondent says that conflict has lessened over the last month or so leading up to trial, as will be discussed below, I have significant concerns about R.M. being exposed to such conflict at each exchange during the 2-2-5-5 parenting arrangement.

Parenting Schedule

- [81] The parties will continue to equally share parenting time of R.M. on the current 2-2-5-5 schedule. The parties agree that they should each have parenting time with R.M. on Mother's Day and Father's Day respectively. The parties also agree that they should alternate parenting time on Halloween.
- [82] The parties also agree that the Christmas holidays should be shared equally, and that for the time being at least, the 2-2-5-5 schedule should continue throughout the holidays. However, each party agrees that they should alternate time spent with R.M. on Christmas morning and Christmas Eve. Given my understanding as to whose care R.M. was in last Christmas, notwithstanding the regular parenting schedule, the claimant shall have R.M. in her care from Christmas Eve until 2:00 p.m. on Christmas Day and the respondent will have R.M. in his care from 2:00 p.m. on Christmas Day until 2:00 p.m. on Boxing Day in 2024 and this will alternate in years going forward. Parenting exchanges during these occasions will occur at a mutually agreeable location in Peachland or some other mutually agreeable location between the parties or determined by the parenting coordinator.

Parenting Responsibilities

- [83] Each party seeks to be provided with sole authority to exercise all of the parental responsibilities with respect to R.M. The claimant seeks an order in accordance with the Joyce Model, with disagreements to be resolved by a parenting coordinator in first instance.
- [84] Given my conclusions above with respect to the nature of conflict and the history of family violence, it would be preferable to implement a parenting arrangement that provides the parties with assistance in matters that require them to cooperate. As will be discussed later, the parties have agreed to the appointment of a parenting coordinator. The parenting coordinator will work with the parties to assist them in building consensus and establishing protocols for the parties' communication. The parenting coordinator will also assist them in developing strategies for reducing conflict. If the parties are unable to agree on significant matters affecting R.M., the parenting coordinator will have the ability to make determinations, including with respect to parenting time and the exercise of parenting responsibilities as set out in these Reasons.
- [85] One of the biggest points of contention between the parties is with respect to where R.M. will attend daycare and where he will attend school when he starts kindergarten in September 2026. As discussed earlier, R.M. currently attends two daycares, one in downtown Kelowna while in his mother's care and the other in Penticton while in his father's care. The parties' parenting counsellor recommended to the parties that parenting exchanges should occur at the child's daycare to reduce the potential for conflict. As discussed earlier, I agree that the parenting exchanges need to be modified in order to reduce conflict.
- [86] The claimant seeks an order that R.M. attends Little Grasshoppers in downtown Kelowna and that the exchanges occur there. The respondent submits that each party should maintain their current daycare and that exchanges are to continue to occur in the current location in Peachland, approximately 20-30 minutes from each parents' respective homes.
- [87] The respondent lives in the Summerland Home which is approximately a one-hour drive from the daycare in downtown Kelowna. I agree that it is not optimal for R.M. to drive one hour in each direction on each day that R.M. is in the respondent's care. However, I am strongly of the view that the parenting exchanges cannot continue to occur in the manner that they have and that exchanges should occur at the daycare. The question is, which daycare?
- [88] When the respondent left the West Kelowna Home in June 2022, he decided to move in with his mother and stepfather in Summerland, BC, approximately one hour from the home that he and the claimant had decided would be their family home. The daycare in which R.M. is currently enrolled in downtown Kelowna is the same daycare that the parties had sought for R.M. to be enrolled in while they were together. In my view, it is appropriate that R.M. continue to attend the daycare in downtown Kelowna.

- [89] In order to minimize the amount of driving that R.M. is exposed to, I have concluded that it is in R.M.'s best interest to permit the respondent to continue R.M.'s enrolment in the daycare in Penticton and for R.M. to attend that daycare during the respondent's parenting time, if the respondent so chooses. Consequently, on days when a parenting exchange is to occur at the beginning of the respondent's parenting time, the respondent will pick up R.M. from the daycare in downtown Kelowna. During his parenting time, the respondent is free to maintain R.M.'s enrolment in the daycare of his choice and R.M. may attend at that daycare. On days that the respondent's parenting time is ending and the claimant's parenting time is to begin, he is to bring R.M. to the daycare in Kelowna in the morning and the claimant will pick him up in the afternoon. Each party will be responsible for the cost of enrolment in their preferred daycare.
- [90] The above arrangement is not perfect; R.M. will be required to spend some time driving from Summerland to the daycare in Kelowna and back but only on exchange days. However, in my view, this arrangement minimizes the amount of driving to the greatest extent while maintaining stability for R.M. and minimizing the potential for conflict between the parties.
- [91] At this point, the respondent has indicated that he has no intention of moving away from Summerland and would strongly prefer that R.M. attend elementary school there, approximately five minutes from the Summerland Home. Other than his preference for Summerland, he has provided no reason as to why education there is superior to the education available to R.M. in West Kelowna. I note again that the parties both agreed to make their family home in West Kelowna and presumably had considered educational opportunities for R.M. as part of that decision. It was the respondent who decided to move an hour away from that location when the parties separated and he voluntarily quit his job.
- [92] At this time, it is very unlikely that the parties will be able to agree on where R.M. should attend kindergarten in September 2026. However, R.M. will not be eligible to begin kindergarten for approximately two years and much can change in that time. I am hopeful that by working with the parenting coordinator, the parties will be able to establish a framework that will assist them in coming to an agreement. I have concluded that, in accordance with the Joyce Model, the parties are to discuss R.M.'s schooling and attempt to reach an agreement. If they cannot reach an agreement, then the claimant will be entitled to make the final decision. In that event, should the respondent not agree with the claimant's decision, he has a right to apply to the parenting coordinator for a determination or, if the parenting coordinator is no longer retained, then to the Court under s. 49 of the FLA.
- [93] The parties will each be responsible for making the day-to-day decisions affecting R.M. while the child is in their care. The parties will each be responsible for making decisions where the child will reside while in their care as long as the 2-2-5-5 shared parenting arrangement can be sustained. The parties will each have the responsibility to make decisions respecting with whom R.M. will live and associate with while R.M. is in their respective care.

- [94] The parties have agreed in their submissions that each should be responsible for making decisions with respect to the child's extracurricular activities while R.M. is in their care. As R.M. gets older, his participation in extracurricular activities may impinge upon the other's parenting time. The parenting coordinator will assist the parties in building consensus about R.M.'s participation in activities and will have the ability to make the determination if the parties are unable to agree, including with respect to the payment of those activities.
- [95] Each party will be responsible for making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing while in their care.
- [96] During the course of the trial, there was some suggestion by the claimant that the respondent had sought medical attention for the child in circumstances that were unnecessary. I do not agree that the evidence shows this. The evidence shows that some of the respondent's concerns about R.M. were observed by the attending physician and I am not persuaded that the respondent is incapable of making medical decisions in respect of the child. Therefore, each party will be responsible for making decisions with respect to medical, dental, and other health-related treatments for the child while they are in their care. Each party is to notify the other of any medical, dental, or other health-related appointments that the child may have and the results of any such appointments. Appointments are not to be made during the other party's parenting time except in urgent circumstances. Each party is entitled to request and receive from third-parties health, education, or other information respecting R.M.
- [97] When the respondent left the West Kelowna Home, he took R.M.'s identification documents with him, including his passport and BC Services Card. He also took the claimant's passport at the same time and did not return the passport to her until required to do so by the court more than one year later. The claimant has since been provided with photocopies of R.M.'s identification documents but the originals remain in the respondent's former counsel's safekeeping. On his own evidence, the respondent appears to have treated R.M.'s and the claimant's identification documents as pawns in this litigation. I order that R.M.'s identification documents be provided to the claimant forthwith and that she be the parent responsible for keeping them. Copies are to be provided to the respondent for his retention.
- [98] The claimant will be the parent responsible for obtaining future passports for R.M. as the primary applicant and the respondent is to provide his signature on such applications within one week of being requested. Each parent is permitted to take R.M. outside of Canada during their parenting time as scheduled or as the parties agree otherwise.
- [99] Each party will have the authority to give, refuse, or withdraw consent for R.M. while R.M. is in their care if consent is required. Each party is entitled to receive and respond to any notice the parent or guardian is entitled or required by law to receive and must provide the other parent with a copy of such notice.

[100] I have provided each party with a significant amount of authority to exercise their parental responsibilities while R.M. is in their care. The parties are obligated to discuss significant decisions that may have an impact upon R.M. while in the other's care and to try to reach an agreement on those decisions. The parenting coordinator is to assist the parties in building consensus and establishing a protocol for communication in respect of such decision making. If the parties are unable to agree, the parenting coordinator will have the authority to make determinations.

PARENTING COORDINATOR

[101] The claimant has sought the appointment of a parenting coordinator from an early point in this litigation. While the respondent initially opposed such an appointment, during the course of the trial he agreed that a parenting coordinator should be appointed. In my view, the appointment of a parenting coordinator is appropriate. Given the high conflict nature of the parties' relationship and the need for this Court's intervention on a number of occasions before this trial, I am persuaded that the appointment of a parenting coordinator will be a significant advantage for the parties and will benefit R.M.

[102] Pursuant to s. 15 of the FLA, the parties are to forthwith retain the services of a parenting coordinator for a period of two years. The parties have advised that they have come to an agreement on seeking the appointment of Cori McGuire in West Kelowna as the parties' parenting coordinator. Should Ms. McGuire not be able to be retained for some reason, then within 15 days of the date of these Reasons for Judgment, the claimant is to propose three names of certified parenting coordinators who are available and willing to assist the parties, and the respondent will select the parenting coordinator from those three names provided.

[103] The appointment of the parenting coordinator is to be in the standard form on the standard terms and the role of the parenting coordinator will be as follows:

1. To assist the parties in the manner set out in s. 17(a) of the FLA. In particular, but not limited to, the parenting coordinator is to assist the parties in building consensus by creating guidelines and protocols for communication and decision making and for creating strategies for resolving conflict between the parties.
2. To make such determinations as are necessary to resolve any dispute concerning the parties' execution of their respective parenting time and responsibilities.
3. Otherwise to make determinations as are necessary in respect of those matters set out in subsections 6(3) and (4) of the Family Law Act Regulation, B.C. Reg. 347/2012

[104] The claimant submits that the respondent should be responsible for 100% of the costs of the parenting coordinator. The respondent takes the view that the cost of the parenting coordinator should be shared evenly. I agree with the respondent; the costs of the parenting coordinator shall be shared equally by the parties. Sharing the costs of the parenting coordinator equally will give both parties an incentive to come to a resolution without the need of involving the parenting corridor.

[105] The parties are currently seeing a parenting counsellor. The parenting counsellor has advised that she is able to work concurrently with a couple who is also working with a parenting coordinator. The parties are free to continue to work with the parenting counsellor in conjunction with their retention of the parenting coordinator, but they are not obliged to do so.

CHILD SUPPORT

[106] The parties do not dispute that child support is the right of the child and should be paid to the recipient parent based on the Federal Child Support Guidelines, SOR/97-175 [Guidelines].

[107] Pursuant to a without prejudice, interim, order of Justice Veenstra dated November 16, 2022, the claimant was found to have an imputed Guidelines income of \$130,000 and the respondent was found to have an imputed Guidelines income of \$85,000 for the purposes of child support. Pursuant to the November 16 order, the claimant paid the set-off amount of \$381 per month to the respondent for the support of R.M. Those payments were to commence November 1, 2022, and were to continue on the first day of each and every month until further order of this court.

[108] The claimant seeks a retroactive adjustment of the support she has paid to the respondent based upon adjustments she says should be made to her and the respondent's income. The claimant submits that additional income should be imputed to the respondent on the basis that he is intentionally underemployed. The main issue for my determination is the claimant's and respondent's incomes in 2022, 2023, and in 2024 and going forward.

Applicable Law

[109] Parents are obligated by statute to provide support for their children: FLA, s. 147. A child support order recognizes each parent's obligation to support their children and the Guidelines apportion that obligation. A court making an order for child support must do so in accordance with the Guidelines: FLA, s. 150.

[110] The objectives of the Guidelines 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.

[111] Income for child support purposes is generally determined using parties' "Total Income" on the CRA T1 General form, in accordance with s. 16 of the Guidelines. Pursuant to s. 17, where the court is of the opinion that a spouse's income determination under s. 16 would not be fair, the court may look to the spouse's income over the last three years in determining an amount that is reasonable in light of any pattern in income.

[112] Section 19(1) of the Guidelines gives the court discretion to impute income to a spouse in certain circumstances. Of particular relevance to this case is s. 19(1)(a) which provides that the court may impute income to a spouse where that spouse is intentionally underemployed, other than where the underemployment is required by the needs of the child or by the reasonable educational or health needs of the parent.

[113] The court is to answer three questions in determining whether to impute income to a spouse (*Drygala v. Pauli* (2002), 2002 CanLII 41868 (ON CA), 61 O.R. (3d) 711, 219 D.L.R. (4th) 319 (O.N.C.A.)):

1. Is the spouse intentionally under-employed or unemployed?
2. If so, is the intentional under-employment or unemployment required by virtue of the spouse's reasonable educational or health needs or the needs of a child of the marriage?
3. If the answer to question #2 is negative, what income is appropriately imputed in the circumstances?

[114] A spouse is intentionally under-employed when they choose to earn less than what they are capable of earning: *Barker v. Barker*, 2005 BCCA 177 at paras.18-19. Section 19(1)(a) does not apply where, through no fault or act of their own, the spouse is terminated from their employment or given reduced hours: *Drygala* at para. 28. In British Columbia it is not necessary for a party alleging under-employment to show that their former spouse is under-employed with the intent of avoiding support obligations: *Barker* at paras.18-19. The party seeking to have income imputed to their former spouse bears the onus of showing, on a balance of probabilities, that their former spouse is intentionally under-employed: *Windle v. Windle*, 2010 BCSC 18 at para. 88.

- [115] In exercising its discretion under question three of the Drygala framework, the court must consider whether the spouse's under-employment is reasonable in the circumstances having regard to the spouse's employment history, age, education, skills, health, available employment opportunities, and the standard of living enjoyed during the marriage: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37; *Drygala* at para. 45.

The Claimant's Income

- [116] The claimant's Guidelines income is relatively easy to determine. The claimant has been employed in the architectural design and building industry since January 2017. She earns a fixed salary plus a variable bonus of up to 25%. There are particular formulas for how and when her bonus gets paid and what her sales target is each year. While her income fluctuates given this bonus structure, the claimant is quite accurately able to predict her income for the present year in February of that year when the balance of the previous year's bonus is actually paid to her.
- [117] The claimant's income was \$75,580.62, \$120,466.61, and \$155,833.57 in 2021, 2022, and 2023, respectively. The average of these three years is \$117,293.60. While the claimant submits that her income for the purpose of support should be determined with reference to her previous three years of earnings, she does not submit that her income should be the average. Rather, she says that her income should be determined at \$130,000 to account for the fluctuations in her salary.
- [118] The claimant's lower 2021 income is attributable to the fact that the claimant was on parental leave for almost the entire year. As I understand it, the larger 2023 salary is attributable to an unusually strong year following sales made during the COVID pandemic. In her F8 financial statement, the claimant predicts that her 2024 Guidelines income will be \$125,678. The claimant is quite confident in her projected 2024 income given that she has already received the balance of the bonus attributable to her 2023 sales.
- [119] In my view, the calculation of income pursuant to s. 16 is the most appropriate method to determine the claimant's Guidelines income. The claimant's income is relatively stable and predictable. The fluctuations in the claimant's income are not such that it is necessary to have resorted to a pattern of income. The amounts that she earned in the years referenced above were the amount that she received and were available for support.
- [120] Consequently, I find that the claimant's Guidelines income for 2022 and 2023 was \$120,466.61 and \$155,833.57. I accept that the claimant's Guidelines income for 2024 should be as set out in her F8 financial statement: \$125,678.

Respondent's Income

- [121] The claimant submits that the respondent's income should be imputed at a "minimum" of \$100,000 per year on the basis that the respondent is intentionally underemployed.

- [122] In his most recent F8 financial statement, the respondent reports his expected 2024 income to be \$48,172. As referenced above, pursuant to the interim, without prejudice, order of Veenstra J., the respondent's Guidelines income was imputed as being \$85,000 per year. Following the close of the claimant's case, the respondent advised the Court that he agreed that his income should continue to be imputed in the amount of \$85,000 per year. By the time he made his closing submissions, the respondent submitted that his annual income since separation should be imputed as being \$92,000.
- [123] I have no trouble concluding that the respondent is underemployed for the purposes of s. 19(1)(a) of the Guidelines. The respondent voluntarily left his employment as a water distribution operator in September 2022. At that time, the respondent was on parental leave and was scheduled to return to work later that month. The parties had separated approximately two and a half months earlier, on June 19, 2022, and the respondent had left the West Kelowna Home and moved in with his mother at the Summerland Home.
- [124] The respondent provides two reasons for why he left his employment. The first is that he says that he and the claimant had agreed that he would never return to that employment given some conflict he had experienced with his supervisor. The second reason is that the respondent says that he was "forced to quit" because the parties move from the downtown Kelowna condominium to the West Kelowna Home violated his employment contract, which he says required him to be within a certain distance or time from a particular area while fulfilling his on-call duties. The evidence does not support either of the respondent's assertions.
- [125] While the parties clearly contemplated the respondent finding alternative employment upon returning to work from his parental leave, there was no agreement that the respondent would not return to some sort of gainful employment at an equivalent level of remuneration. In fact, the evidence shows that despite the respondent's desire not to return to his employer, he was prepared to do so as a last resort if the circumstances required. Clearly, the parties had understood that neither of them could be stay-at-home parents given the recent purchase of the West Kelowna Home and their other financial circumstances.
- [126] I also do not agree that the respondent was forced to quit because of the distance between the West Kelowna Home and his employer's geographical boundaries. I accept that when the respondent accepted his position as a Level III water distribution operator, he was required to be on the after-hours on-call rotation. The respondent pointed to a document that says those on the on-call rotation must physically be within approximately 15 minutes of the district boundaries at all times while on-call.
- [127] D.W., the chief administrative officer of the respondent's former employer, was called by the claimant to testify. Her evidence was that employees who were on-call were generally expected to be within 15 to 20 minutes of the district's boundary lines but she stated that this was a guideline and not an official job requirement. She explained that the composition

of the on-call roster would be reviewed by management and that someone who resided unreasonably far away from the district boundaries would be taken off the roster. D.W. testified that someone who originally resided within 15 to 20 minutes of the district's boundary and subsequently moved further away would definitely not be terminated. Rather, management would review the composition of their on-call roster. The respondent was unable to point to any documents of the employer that would contradict D.W.'s evidence and I accept her testimony.

- [128] While it is clear that the Summerland Home is more than 20 minutes away from the district's boundaries, it appears from the evidence before me that the West Kelowna Home was actually within 15 to 20 minutes of the district's boundaries. It is not clear to me why the respondent says he was forced to quit by virtue of the move to the West Kelowna Home. Contrary to the respondent's suggestion, there is no evidence that on-call employees could not live on the West Kelowna side of the Bennett Bridge.
- [129] In any event, the respondent acknowledges, and D.W. confirmed, that he had no conversations whatsoever with D.W., or anyone else at his employer, about whether he could maintain his employment as a water distribution operator after his move to West Kelowna or to Summerland. As I referenced earlier, D.W. testified that his union position would definitely not have been terminated by virtue of his move.
- [130] While there is evidence of some disputes between the respondent and D.W. while he was employed there, D.W. confirmed that his employment was not at any risk for anything to do with his performance. I do not accept the respondent's submission that he would not have been permitted to return to his employment. The respondent was not forced to quit. He quit voluntarily.
- [131] Following his resignation in early September 2022, the respondent remained unemployed until January 23, 2023. At that time, the respondent was hired by his current employer as bookkeeping associate. As I understand it, his income in his current job is approximately \$44,000 per year plus a variable bonus of up to \$5,000 per year and a \$1,000 bonus payable in respect of the busier tax season. The respondent's reported Line 150 income for 2023 was \$48,467 and he has reported this as his expected earnings for 2024. He testified that he hopes to be promoted which would come with a raise to approximately \$61,000 per year.
- [132] When the respondent resigned his employment in September 2022, he was qualified as a Level III water distribution operator under the Environmental Operators Certification Program and was earning an annual income of approximately \$92,000, including on-call and overtime pay. He was promoted to that role in November 2018 and had been working for the same employer since January 2016 in a unionized position. The evidence shows that the respondent was relatively close to being qualified as a Level IV operator.

- [133] The respondent received a bachelor of arts degree from University of Victoria in 2012. In 2014, he entered a program to obtain a water engineering diploma at Okanogan College. The respondent participated in a cooperative work opportunity during the summer of 2014 and 2015 with his former employer. He was hired full-time upon completion of his diploma. The respondent's current employment does not require a university degree and the respondent is not making use of his post university employment qualifications.
- [134] The respondent took few steps to apply for employment in his field after quitting his employment in September 2022. He testified that he provided his resume to a couple of other municipalities and was told that although they had no openings at the time, they would keep his resume on file. Apparently, and rather inexplicably, the respondent assumed that this was sufficient in order to apply for any future openings that he was qualified for. Not surprisingly, neither of those municipalities contacted the respondent.
- [135] In 2023, the claimant provided the respondent with a number of job postings in the field of water treatment and distribution that the respondent appears to have been qualified for. Those positions provided a wage comparable to what he was earning when he left his previous employment. Despite this, the respondent did not apply for any of those positions and he provided no cogent explanation for not doing so. Instead, the respondent pursued a claim for spousal support.
- [136] Interestingly, D.W. testified that the respondent's former position is currently open. She testified that if the respondent was to apply, he would be considered for the position. The respondent has no intention of applying for his former position given his view of the relationship he had with D.W. However, he states that he intends to look for better paying employment. He acknowledges that he is in good health. There is no indication that his underemployment is due to his educational needs or the needs of R.M.
- [137] Having regard to the respondent's employment history, age, education, skills, health and the extensive available employment opportunities in his field at a comparable wage to what he was earning from his previous employment, I have no trouble in concluding that the respondent is underemployed for the purposes of the determination of his Guidelines income. The only question is, how much income should be imputed to the respondent?
- [138] As referenced earlier, during closing submissions, the respondent conceded that he should be imputed income in the amount of \$92,000 per year. This is equivalent to the amount he was earning at his former employer when he resigned in September 2022. While the respondent may not have preferred to return to employment at his former employer, it was, and remains, his obligation to maximize his earning potential for the purposes of the support of his child. There was no legitimate reason for the respondent to leave his employment. The more prudent thing to have done would have been to return to his employment while searching for other employment that he was qualified for at a comparative wage.

- [139] I have the benefit of the respondent's former collective agreement effective until December 31, 2025. It sets out the wages applicable for his employment as a Level III operator in 2023 and 2024. I accept that given the respondent's current residence at the Summerland Home, he would not likely be eligible for on-call shifts. Thus, I have not imputed income related to being on-call. However, the respondent agreed that he averaged between three and eight hours of overtime per week during the course of his employment and that overtime was paid at the time of the half. Had the respondent remained in his employment, I find that his annual rate of pay in 2022 would likely have been approximately \$92,000 and I impute that income to him.
- [140] In my view, the fairest calculation of the respondent's income in 2023 and 2024 would account for approximately five hours of overtime per week and would be based upon the rates payable to the respondent under the collective agreement of his former employer. Consequently, I find that the respondent's 2023 and 2024 income should be imputed as being \$96,000 and \$98,000, respectively.
- [141] Although the parties are to exchange financial information each year and adjust child support based upon that exchange of information, the respondent's income will be no less than \$98,000 per year.

Retroactive Adjustments

- [142] Given my conclusions with respect to the parties' incomes, the amount of child support payable since November 1, 2022, will need to be adjusted. As referenced earlier, the claimant has been paying the respondent child support in the amount of \$381 per month on the basis that the claimant's income was \$130,000 and the respondent's income was \$85,000.
- [143] In 2022, I found the claimant's income to be \$120,467 and the respondent's income to be \$92,000. Consequently, in November and December 2022, the claimant's set-off amount for child support payable to the respondent was \$239 instead of the \$381 she paid pursuant to the interim order.
- [144] In 2023, I found the claimant's income to be \$155,834 and the respondent's income to be \$96,000. Consequently, the claimant's set-off amount for monthly child support payable to the respondent throughout 2023 was \$490 instead of the \$381 she paid pursuant to the interim order.
- [145] I found the claimant's 2024 income to be \$125,678 and the respondent's income to be \$98,000. Consequently, the claimant's set-off amount for monthly child support payable to the respondent in 2024 was \$230 instead of the \$381 she paid pursuant to the interim order.
- [146] By my calculation, the claimant has overpaid her child support obligations from November 1, 2022, to September 1, 2022, in the amount of approximately \$339.

Amount of Child Support Payable Going Forward

- [147] For the purposes of ongoing support, I have determined that the claimant has a 2024 Guidelines income of \$125,678 and that the respondent has a 2024 Guidelines income of \$98,000. Pursuant to s. 9 of the Guidelines, the amount of set-off child support payable from the claimant to the respondent is \$230 per month. To account for the fact that the claimant has overpaid child support in the amount of \$339 since November 1, 2022, she will not be required to make a payment of child support on October 1, 2024. On November 1, 2024, she will be required to make a payment of \$121. Commencing December 1, 2024, the claimant is to pay \$230 per month to the respondent. This amount is to be paid on the first day of each month for as long as the child is eligible for support or until further order of the Court, or agreement between the parties
- [148] The parties are to exchange notices of assessment and T1 tax returns no later than May 31st of each year. The amount of child support payable is to be adjusted annually based on the parties' income from the previous year and the parties are to commence paying the adjusted amount on July 1st of each year.
- [149] On July 1, 2025, the claimant's Guidelines income will be adjusted in accordance with her 2024 Line 150 income and notice of assessment.
- [150] To be absolutely clear, the respondents Guidelines income will be imputed as no less than \$98,000. Nonetheless, he is still required to provide the claimant with his annual tax information. If his income is greater than \$98,000, then support will be adjusted in accordance with para. 148 above.

Section 7 Expenses

- [151] The parties agree that each parent will be responsible for the cost of extracurricular activities they enroll R.M. in during their parenting time. At this time, the only organized activities are swimming and possibly soccer.
- [152] As discussed above, the parties will be responsible for bearing the costs of their chosen daycares. If the respondent chooses not to continue R.M.'s enrollment in a separate daycare from the downtown Kelowna daycare, the parties are to share the costs of the daycare proportionate to their incomes as I have found them to be.
- [153] Health related and extraordinary educational expenses are to be shared proportionate to the parties' income.
- [154] Disputes between the parties in respect of s. 7 expenses are to be determined by the parenting coordinator.

CONDUCT ORDERS

[155] Both parties seek conduct orders. Given the high conflict nature of the parties' relationship and their demonstrated difficulties with communication, I find that it is appropriate to make the following conduct orders under ss. 222 and 225 of the FLA:

1. The parties will maintain polite, civil, positive, and respectful communications with each other, refraining from negative or hostile criticism, communication or argument in front of the child or otherwise at all times, including transitions, for the best interests of the child.
2. The parties will encourage the child to have a good relationship with the other parent and speak to the child about the other parent and that parent's partner in a positive and respectful manner.
3. Neither party will:
 - a) question the child about the other party or time spent with the other party beyond simple conversational questions;
 - b) discuss with the child any inappropriate adult, court, or legal matters; or
 - c) blame, criticize, or disparage the other party to the child or in the presence of the child
4. The parties will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of the child concerning family issues or litigation.
5. Under s. 225 of the FLA, the parties' communication will be as follows:
 - a) The parties will primarily use Our Family Wizard to communicate regarding the child, including scheduling and expenses. If communication by Our Family Wizard is impractical for a particular communication, that communication may be sent by email.
 - b) The parties may communicate via text message, or email in emergencies.

COSTS AND SUMMARY OF ORDERS

Costs

[156] The claimant seeks special or tariff costs of these proceedings. The respondent submits that each party should bear their own costs. While I have found that the respondent's allegations with respect to the claimant's alcohol abuse were without merit, in my view, the respondent's conduct in the litigation does not rise to the level of reprehensible behaviour that warrants an order of special costs.

- [157] Pursuant to the consent order, the respondent abandoned his claims with respect to property division and spousal support. The claimant was also substantially successful on the matters that remained to be determined by this Court, including with respect to the most important issue of the parenting arrangement.
- [158] The respondent suggests that the parties should bear their own costs in light of his decision to agree with the claimant's position on property division and spousal support. While I commend the respondent for the concessions he made in abandoning both his claim over the West Kelowna Home and his claim for spousal support, his concession came very late in the day. In my view, the evidence tendered during the claimant's case was consistent with the facts as they were known to the respondent, or as they ought to have been known to the respondent, at the outset of this trial and before. Had the respondent appreciated and properly considered those facts, the amount of court time needed to resolve the remaining issues would have been significantly reduced. The excessive amount of trial time needed in this case is a result of the position taken by the respondent until more than halfway through the trial.
- [159] The claimant is entitled to her costs on Scale B.

Summary of Orders Made

- [160] As mentioned earlier, division of property and debt, and spousal support claims have been resolved by way of the consent order dated August 22, 2024. The following is a summary of the orders made with respect to the matters that remained to be determined at this trial:

Guardianship and Parenting Arrangement

1. By CONSENT, the parties shall be the guardians of the child under s. 39(1) of the FLA.
2. Pursuant to s. 15 of the FLA, the parties will forthwith retain Cori McGuire, a member in good standing of the Roster of the British Columbia Parenting Coordinators Roster Society (the "Society") as parenting coordinator (the "Parenting Coordinator"), for a minimum term of 24 months, on the terms provided in this Order and in the most current form of generally accepted precedent for a parenting coordination agreement endorsed by the Society (the "Standard PC Agreement"); provided that where terms of this Order conflict with the Standard PC Agreement, this Order will prevail.
3. Should the parties be unable to retain Ms. McGuire, then within 15 days of these Reasons for Judgment, the claimant is to propose three names of parenting coordinators who are members of the Society in good standing and who are available and willing to assist the parties. The respondent will select the parenting coordinator from those three names within one week of them being provided to him and the parties will retain the services of that parenting coordinator in accordance with subparagraph 2, above.
4. The Parenting Coordinator may assist the parties in the following manner:

- a) by building consensus between the parties, including, but not limited to:
 - i. developing and instituting guidelines for the implementation of the parenting terms of this Order;
 - ii. developing and instituting guidelines for communications between the parties;
 - iii. identifying, creating and implementing strategies for resolving conflicts between the parties; and
 - iv. providing information respecting resources available to the parties for the improvement of their communication or parenting skills; and
- b) subject to the specific provisions of this Order, pursuant to s. 18 of the FLA, and in the event the parties cannot agree on any matter respecting their parenting responsibilities as defined in s. 41 of the FLA, by making a determination on such matters, subject to s. 19 of the FLA.
- 5. The fees, disbursements, and other charges of the Parenting Coordinator will be shared equally by the parties, subject to the Parenting Coordinator's authority to reapportion the total parenting coordination costs between the parties as provided in the Standard PC Agreement.
- 6. The parties will each have the authority to exercise the parental responsibilities set out in s. 41(a), (b), (c), (e), (f), (h), (i), (j), (k) of the FLA while the child is in their care.
- 7. For the exercise of the above parenting responsibilities, both parties must consult each other about important decisions affecting the child and try to reach an agreement. If an agreement cannot be reached, the Parenting Coordinator shall make the determination.
- 8. Each party will be responsible for making decisions in respect of the child's participation in extra-curricular activities that occur during their parenting time and for the payment of such expenses. The Parenting Coordinator may make determinations in respect of the child's participation in, and the cost of, activities that occur during the other's parenting time.
- 9. Subject to subparagraph 15 below regarding the location of parenting exchanges, each party will be responsible for making decisions in respect of the child's attendance at daycare while the parent is exercising their parenting time.
- 10. The parties are to discuss the location of the child's elementary school and attempt to reach an agreement. If they are unable to agree, the claimant will have final decision-making authority in respect of where the child will attend elementary school, subject to the respondent's right to seek a determination from the Parenting Coordinator or from the Court under s. 49 of the FLA if the Parenting Coordinator is no longer retained.

11. Originals of the child's passport and other identification is to be provided to the claimant forthwith and the claimant will be responsible for retaining the originals. The claimant will provide the respondent with copies of the child's identification.
12. The claimant will be the parent responsible for obtaining future passports for the child as the primary applicant and the respondent is to provide his signature on such applications within one week of being requested.
13. Each parent is permitted to take the child outside of Canada during their scheduled parenting time, or as the parties agree otherwise. Disputes are to be resolved by the Parenting Coordinator.
14. The parties will have equal parenting time with the child on the current 2-2-5-5 schedule.
15. Parenting exchanges will occur at Little Grasshoppers Childcare Centre located in Kelowna, B.C., or at a different daycare facility chosen by the claimant, and once the child is attending public school, parenting exchanges will occur at that school.
16. If an exchange occurs on a day other than when the child is at daycare or at school, the exchange is to take place at the Petro-Canada located at 5500 Clements Crescent, Peachland, BC, or at another mutually agreeable location, or a location determined by the Parenting Coordinator.
17. Notwithstanding that the regular parenting schedule is to continue during the Christmas holiday period, the parties will alternate parenting time with the child during Christmas Eve and Christmas Day morning. In even years, the claimant shall have parenting time with the child from 2:00 p.m. on Christmas Eve until 2:00 p.m. on Christmas Day and the respondent will have parenting time with the child from 2:00 p.m. on Christmas Day until 2:00 p.m. on Boxing Day. In odd years, the respondent shall have parenting time with the child from 2:00 p.m. on Christmas Eve until 2:00 p.m. on Christmas Day and the claimant will have parenting time with the child from 2:00 p.m. on Christmas Day until 2:00 p.m. on Boxing Day.
18. Notwithstanding the regular parenting schedule, the claimant will have parenting time with the child from on Mother's Day.
19. Notwithstanding the regular parenting schedule, the respondent will have parenting time with the child from on Father's Day.
20. Notwithstanding the regular parenting schedule, each party will have parenting time with the child on alternating Halloweens.
21. The Parenting Coordinator will assist the parties in establishing a shared parenting arrangement during holidays and may make determinations in respect of parenting time during school holidays if the parties are unable to agree.

Child Support

22. The claimant's Guidelines income for 2022, 2023, and 2024 is \$120,467, \$155,834, and \$125,678, respectively.
23. The respondent's Guidelines income for 2022, 2023, and 2024 is \$92,000, \$96,000, and \$98,000, respectively.
24. The claimant has overpaid the respondent \$339 in the period between November 1, 2022, and September 30, 2024 (the "Overpayment").
25. To account for the Overpayment:
 - a) the claimant is not required to make a child support payment to the respondent on October 1, 2024; and
 - b) the claimant will pay to the respondent \$121 on November 1, 2024, for the support of the child.
26. The claimant will pay to the respondent, \$230 per month for the support of the child, commencing on December 1, 2024, and continuing on the 1st day of each and every month thereafter, for as long as the child is eligible for support or until further agreement of the parties or Court order.
27. For as long as the child is eligible to receive child support, the parties will exchange notices of assessment and T1 tax returns no later than May 31st of each year.
28. By July 1st of each year, the amount of child support payable is to be adjusted based on the parties' incomes from the previous year's tax returns, but the respondent's Guidelines income will not be less than \$98,000.

Section 7 Expenses

29. BY CONSENT, each parent will be responsible for the cost of any extracurricular activities they enroll the child in during their parenting time.
30. Each parent will be responsible for the cost of their chosen daycares. If the parties are able to agree on a single daycare then the parties are to share the costs of the daycare proportionate to their Guidelines incomes.
31. The cost of health related and extraordinary educational expenses are to be shared by the parties in proportion to their incomes.
32. The Parenting Coordinator shall have the authority to resolve disputes between the parties in regards to enrollment in and the costs of special and extraordinary expenses.

Conduct Orders

33. The parties will maintain polite, civil, positive, and respectful communications with each other, refraining from negative or hostile criticism, communication or argument in front of the child or otherwise at all times, including transitions, for the best interests of the child.
34. The parties will encourage the child to have a good relationship with the other parent and speak to the child about the other parent and that parent's partner in a positive and respectful manner.
35. Neither party will:
 - a) question the child about the other party or time spent with the other party beyond simple conversational questions;
 - b) discuss with the child any inappropriate adult, court, or legal matters; or
 - c) blame, criticize, or disparage the other party to the child or in the presence of the child.
36. The parties will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of the child concerning family issues or litigation.
37. Under s. 225 of the FLA, the parties' communication will be as follows:
 - a) The parties will primarily use Our Family Wizard to communicate regarding the child, including scheduling and expenses.
 - b) If communication by Our Family Wizard is impractical for a particular communication, that communication may be sent by email.
38. The parties may communicate via text message, or email in emergencies.

Costs

39. The claimant is entitled to her costs on Scale B.

[161] I will seize myself with respect to matters arising in respect of the implementation of the order and applications to vary for a period of 12 months.

"Majawa J."

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Prepared on 27 October 2026 · Esheria