

CANADA / JUDGMENT

J.S.M. v. T.K.N.

2026 BCSC 305

COURT

Supreme Court of British Columbia

DECIDED

25 February 2026

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2026 BCSC 305 J.S.M. v. T.K.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.S.M. v. T.K.N.,

2026 BCSC 305

Date: 20260225

Docket: E69737

Registry: New Westminster

Between:

J.S.M.

Claimant

And

T.K.N.

Respondent

And

P.S.M. and P.K.M.

Respondents by Counterclaim

Corrected Judgment: The text of the judgment was corrected at paragraph 33 on April 7, 2026.

Before: Associate Judge Peck

Reasons for Judgment

Counsel for the Claimant:

R. Mallhi

Counsel for the Respondent:

V. Aggarwal

Place and Date of Hearing:

Vancouver, B.C.

January 23, 2026

Place and Date of Judgment:

Vancouver, B.C.

February 25, 2026

- [1] This is an application by the respondent for interim child and spousal support, child and spousal support arrears, an order requiring the claimant to financially contribute to the maintenance of the family home, and for document production. In the calculations of child and spousal support owing, the respondent also seeks imputation of income to the defendant, who is a self-employed truck driver. She also seeks a fine due to the claimant's non-disclosure and costs of this application payable forthwith in any event of the cause. The application was filed June 23, 2025 but the respondent was not able to have it heard until seven months to the day later.
- [2] For the reasons that follow, the claimant will pay to the respondent monthly child support for both children in the amount of \$1,866 and monthly spousal support in the amount of \$718, starting March 1, 2026. By June 30, 2026 the claimant will also pay to the respondent \$13,619.50 in child support arrears and \$13,244.00 in spousal support arrears. The respondent will also disclose by March 20, 2026 all but item 20 of the documents sought by the respondent. Most of the document production issues were resolved by consent at the hearing, which is reflected below. The remainder of the relief sought is dismissed.
- [3] There was an application by the claimant to sell the family home scheduled to be heard at the same time but there was insufficient time to hear that application, so it was adjourned generally at the conclusion of the hearing. One item of relief sought in that application had already been heard and determined in December 2025.

Background

- [4] The parties were married in India on March 1, 2004. The respondent has resided in Canada since approximately 1995. At the time of the marriage, the claimant was living in India. He moved to Canada in or about late 2004.

- [5] The parties raised two children together, T. born December 2006 and J. born August 2009. T. is currently attending university full time with an expected graduation date of December 31, 2028. J. is in grade 11.
- [6] The parties separated in March 2024. It appears that the claimant learned information in or around that time that led him to suspect that T. was not his biological child. This was one of, if not the triggering event for the separation. The parties disagree about whether separation occurred on March 1, 2024 or March 17, 2024.
- [7] Since separation, the respondent has lived with the children at the former family home. The claimant is living in a basement suite at his parents' residence, a short distance away. He claims to be paying \$2,000 in rent to his parents for that suite.
- [8] The claimant is self-employed as a long-haul truck driver. Until mid-2024 he operated as a sole proprietorship, but from and after July 2024 he has operated through a wholly-owned corporation he incorporated in 2019 or 2020 but did not use as an operating company until that time.
- [9] It is not disputed that the respondent has primary care of the children. The claimant has some sporadic parenting time with them, which is in part impacted by his work and the amount of time that it requires him to be away.
- [10] The claimant has made some payments to the respondent since separation, though the amount and nature of those payments is in dispute. In particular, it is not entirely clear whether those payments have been for child support or other purposes. The email address to which the claimant has sent these amounts is identified as "childsupport" in his etransfer contacts, but the memos reflected on the etransfers themselves sometimes indicate a different description of the purpose of the funds.
- [11] The respondents by counterclaim are the claimant's parents. They were added to the litigation by counterclaim as owners of a property over which the respondent asserted a claim of family property. They did not take part in this application.

Preliminary Evidentiary Issue

- [12] This application was originally filed in June 2025 and the majority of the evidence was filed in and around June and July 2025. However, the respondent sought to introduce an affidavit filed January 20, 2026. Claimant's counsel objected to the admissibility of the affidavit since they had not had a proper opportunity to respond to it. The majority of that affidavit is a reconciliation created by the respondent or her counsel to track the various payments she says have been received and made by the parties, which she submits in support of her argument on child and spousal support arrears and for an order that the claimant continue to pay some of the maintenance costs of the family home.

- [13] In terms of specific prejudicial elements of the affidavit, claimant's counsel submitted that they have not had an opportunity to respond to those new contribution reconciliations put forward by the respondent.
- [14] Given my finding below that arrears should be reduced by the amount the claimant says he has paid, and that no order for contribution to the maintenance of the family home is appropriate, I am satisfied that the late-filed affidavit has not prejudiced the claimant and I have considered it as necessary.

Imputation of Income to the Claimant

- [15] The court has a broad discretion to impute income for support purposes, per *Marquez v. Zapiola*, 2013 BCCA 433 ("Marquez") at para. 36. However, the party seeking to impute income to the other spouse bears the burden of providing an evidentiary basis for the imputation.
- [16] One basis for imputation of income is s. 17 of the Federal Child Support Guidelines, SOR/97-175 (the "Guidelines"), which allows consideration of a pattern of income rather than one year in isolation.
- [17] Another is s. 18 of the Guidelines, which indicates that where one spouse is the director, officer or shareholder of a corporation, and the court is satisfied that the annual income determined under s. 16 of the Guidelines (line 150 income) does not fairly reflect the amount available for payment of child support, the court may use all or part of the corporation's pre-tax income: "The purpose of s. 18 is to allow the court to 'lift the corporate veil' to ensure that the money received as income by the paying parent fairly reflects all of the money available for the payment of child support" (*Baum v. Baum* (1999), 182 D.L.R. (4th) 715 (BCSC) at para. 28).
- [18] Section 19 of the Guidelines provide significant discretion to the court to impute income for child support purposes where, among other things, income has been diverted which would affect the level of child support determined under the Guidelines, where the spouse has failed to provide income information when under an obligation to do so, or where the spouse unreasonably deducts expenses from income.
- [19] As such, expenses deducted by a self-employed spouse or one who earns income through a wholly-owned corporation are relevant in this analysis. Subsection 18(2) of the Guidelines specifically directs that amounts paid as salary, wages, or fees to non-arm's length parties, "or other payments or benefits to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances".

- [20] Where a company is wholly owned by the payor, the onus is on the payor to provide evidence that the corporation's pre-tax earnings are not available for support purposes, per *Quinton v. Kehler*, 2020 BCCA 254 ("Quinton") at para. 85. The nature of the business is relevant not only to what expenses are reasonably deducted but also what measure of retained earnings is appropriate so as not to "[kill] the goose that lays the golden egg" by impairing the company's ability to continue to earn income (Quinton at para. 74).
- [21] Per *K.M.H. v P.S.W.*, 2018 BCSC 2022 at paras. 97-99, on an interim application such as this, the court's role is not to conduct a forensic accounting exercise but rather assess expenses for reasonableness. Expenses that may be permitted for income tax purposes are not necessarily "reasonable" under the Guidelines (Marquez at para. 49).
- [22] The parties agree that some income should be imputed to the claimant, even on an interim basis, but disagree on the amount.
- [23] The respondent originally sought imputation of \$200,000 per year before she obtained additional financial disclosure from the claimant; she has subsequently reduced that ask to \$126,000 plus the USD cash withdrawals that appear on the income statements issued by XLI Logistics Inc. ("XLI"), the company the claimant drives for. That suggested imputed income level is based on the claimant's 2023 income because, as described below, his 2024 records are not quite complete.
- [24] In terms of the income information available, the claimant has now provided his income tax returns for 2021-2023. He has earned between \$225,000 and \$307,000 in gross income but has consistently claimed approximately 75% of his income in expense deductions for tax purposes.
- [25] Other than the small amounts deducted as USD cash withdrawals from the claimant's gross income reflected on the statements, the respondent did not challenge the XLI deductions. It was primarily the deductions for tax purposes that she took issue with.
- [26] The respondent has asked for receipts from the claimant to support the expenses claimed but has received none to date and none were included in the claimant's materials. She has received some income statements from XLI, including all statements for 2024 other than October, which is illegible, and all statements for 2023. Those statements show that the claimant is deducting more expenses for tax purposes than the expenses reflected in the income statements that are deducted by XLI at source. For example, on his 2023 tax return, he claimed almost \$126,000 in fuel and \$21,000 in repairs and maintenance, on a gross business income of \$307,720. The XLI statements for 2023 show deductions of approximately \$70,000 and \$6,300 for fuel and repairs, respectively.

- [27] The claimant agrees that some income should be imputed to him but suggests it be done by taking the first six XLI income statements for 2024 and doubling the aggregate amount to make up a 12-month period, for a total of \$108,122. He then suggests deductions recorded on his 2024 tax return be allowed for meals, professional fees, and WorkSafe BC fees, as well as his full capital cost allowance deduction. That brings his proposed annual imputed income to \$81,211.00.
- [28] I agree with the high-level approach proposed by both counsel, that the appropriate baseline for imputation of income to the claimant are his income statements from XLI. While the claimant has deducted further amounts for income tax purposes, which may be legitimate in that context, he has not satisfied the burden of proving that most of the additional expenses deducted are proper for support purposes. Despite the fact that the claimant has only been earning income through his wholly-owned corporation since July 2024, I am satisfied that a consistent approach to imputing income in the relevant period is authorized by the Guidelines and is appropriate in the circumstances.
- [29] In particular, while I accept that meal expenses are likely reasonable deductions for tax purposes, since the claimant is consistently away for five or six consecutive days when he works, s. 18 of the Guidelines confirms that personal benefits paid to by non-arm's length third parties by a wholly-owned corporation are to be added back into a spouse's income for support purposes. As such, I decline to deduct meal expenses from his income.
- [30] The other specific categories of expenses that the claimant said should be deducted were fuel, repair and maintenance costs, and capital cost allowance. He says that he does not have receipts for the fuel expenses because they are paid for on a company card and no receipts are provided. He said in his Affidavit #4 filed July 21, 2025 that he "would" have receipts for some of the repair and maintenance costs incurred but "will have to locate those". None were provided for the hearing, some six months later.
- [31] The respondent also questions why there are additional repair and maintenance costs being claimed given that a fairly significant amount for repair and maintenance is already deducted by XLI monthly. I accept as a general principle that fuel, repairs and maintenance are fair income-generating deductions, but amounts for those costs are withheld by XLI at the source. The claimant did not explain or provide back up for the discrepancies between the amounts deducted by XLI and the amounts claimed for income tax purposes. Without additional evidence from the claimant in the form of receipts or otherwise to justify the amounts deducted for tax purposes over and above that deducted by XLI, he has not met the burden of showing that these amounts are not properly included as income for support purposes.
- [32] In my view, the year with the most complete and recent income information is 2024. The claimant's income net of expenses reflected on the 11 legible income statements is \$97,000, or on average \$8,818 per month. Over 12 months, that equates to an annual income of \$105,818. I deem that to be the claimant's truck driving income during the relevant period.

- [33] There is also one more category of income that needs to be considered. The family home at one time included two rental suites and currently includes one. The claimant admitted in his affidavit evidence that he has received between \$1,400-\$1,600 per month in rent for the one unit that has been consistently rented (see, e.g., claimant's Affidavit #1 made June 24, 2025 at para. 24 and claimant's Affidavit #2 made June 30, 2025 at paras. 13, and 17). He did not claim in his Form F8 financial statement that he was incurring any expenses related to the family home, and he provided no other evidence of any expenses such that the rental revenue received can be considered his net rental income.
- [34] Therefore, I impute \$14,800 to the claimant for 2024, to account for that rental income, which he admitted was \$1,600/month between March and August 2024, and \$1,500 for the remainder of 2024. I impute half of March 2024's rent to the claimant given the dispute about the separation date that I cannot resolve on the evidence presented on this application.
- [35] I impute \$17,100 to the claimant in rental income for 2025 based on his evidence that he received \$1,500 per month from January-March and \$1,400 per month thereafter.
- [36] In summary, for the purposes of this interim application I impute an annual income of \$120,618 to the claimant for 2024 and \$122,918 for 2025.

The Respondent's Income

- [37] Little time at the hearing was devoted to the respondent's income. There appears to be some allegation that the respondent is under-employed and/or may be earning cash income doing cosmetology work, but there was no clear evidence to that effect provided other than the respondent's general suspicion given some equipment she still owns; the respondent directly denied these allegations in her affidavit materials. The respondent is currently employed full-time as a housekeeper, earning \$24.08 per hour. Her line 150 income in 2024 was \$36,514. Her last paystub for 2025 indicates an annual income of \$50,047.29.
- [38] For the purposes of this interim application, I have determined that it is appropriate to use the respondent's line 150 income of \$36,514 for 2024, and to use an income of \$50,047.29 for 2025, based on her final paystub of the year.
- [39] Claimant's counsel argued that I should add an additional \$2,719 to the respondent's 2025 income from her first paycheque in 2026 since that income was earned in 2025 but not paid until 2026. For the purposes of this interim application, I decline to do so. It is not a significant amount, and this is not to be a forensic accounting exercise at this stage. I note that if the respondent's first paycheque of 2026 is ultimately included in her 2025 income, then presumably her first paycheque of 2025 was included in her reported 2024 income, as well. As such, the delta is even smaller and not material on an interim support application.
- [40] There is also the issue of rental income since the respondent appears to have received at least some rental income when the two units in the family home were tenanted, until November 2024 at the latest. Water damage was discovered in or around that time, which

then led to the city determining that second suite was not authorized. However, other than potentially some lump sum payments by the claimant that I have accounted for in the arrears discussion below, it is not disputed that the respondent has been incurring all carrying costs for the family home, some of which can be offset against rental revenue. As such, I decline to attribute any rental income to the respondent, without prejudice to the claimant's ability to reargue that point at trial.

Child Support

- [41] Normally, once the parties' incomes and the children's primary residence are determined, child support is simply a matter of calculation. This case presents an additional dilemma, however.
- [42] Previously, the claimant applied to have a DNA test performed to confirm whether or not T. was his biological child. The court ordered that test to be performed and I was advised at the hearing of this application that the results confirm that the claimant is not, in fact, T.'s biological father.
- [43] As a result, the claimant argues that he is not responsible for T.'s financial support, despite him being the only father T. has ever known and his having supported him up to separation, and to a certain extent after, in terms of paying some tuition and vehicle expenses. Some such payments have even been made since the DNA test results were received.
- [44] The claimant did not argue at the application that T. was no longer a child of the marriage because they are now 19 years old; as noted, they are in university full time.
- [45] Section 147(4) of the Family Law Act, SBC 2011, c 25 (the "FLA") confirms a stepparent's support obligations so long as support has been provided for at least one year. Claimant's counsel argues that this required one-year threshold has not been met since the claimant only learned definitively that he was not T.'s biological father in late 2025. As such, he says late December 2025 is when the one-year period should commence and since only a few months have passed, the first criterion of s. 147(4) is not met.
- [46] Claimant's counsel also argues that it is a condition precedent that before a court can order someone who stands in the place of a parent to pay support, the circumstances of the child's biological parent must be put before the court. Counsel submits that the biological parent is the person who is primarily responsible to support the child and thus needs to be the first pocket to respond. In that regard, the claimant relies on *Sullivan v. Struck*, 2018 BCCA 256 ("Sullivan") and *E.Z. v. P.Z.*, 2017 BCSC 375 ("E.Z.").
- [47] *Sullivan* involved an appeal of an order made at trial under s. 15.1 of the Divorce Act, RSC 1985 c 3 (2nd Supp) regarding prospective and retroactive child support. The trial judge had ordered some retroactive support payable for 2012 and 2013 by the respondent, who was the child's stepmother, but that her obligations to pay child support ceased in July 2013 because from and after that time the child lived almost exclusively with her biological mother.

[48] In upholding the trial judge's decision, the Court of Appeal at para. 26 first pointed to *Chartier v Chartier*, [1999] 1 SCR 242 ("Chartier"), where Bastarache J. dismissed as invalid concerns that assessing child support obligations of a biological parent and a stepparent independently would result in double collection. At para. 42 of *Chartier*, the court noted that:

The obligations of parents for a child are all joint and several. The issue of contribution is one between all of the parents who have obligations towards the child, whether they are biological parents or stepparents; it should not affect the child. If a parent seeks contribution from another parent, he or she must, in the meantime, pay support for the child regardless of the obligations of the other parent.

[49] The court in *Sullivan* referred to the decision of *H.(U.V.) v. H.(M.W.)*, 2008 BCCA 177 ("H. (U.V.)"), which also discussed the approach to disputes between biological parents and stepparents regarding child support. In that case, at para. 41, Newbury J.A. emphasized the "children-first" perspective of the Guidelines, and specifically noted that:

[W]here one of the natural or adoptive parents is not present or is unable to pay any support, the stepparent may well have to pay his or her full table amount. The Legislature has left it to the judgment of trial and chambers judges in the first instance to fashion order that are "appropriate" under s. 5 [of the Guidelines] . The inquiry must, like the Guidelines themselves, focus on the children and their needs.

[50] The court in *Sullivan* at para. 30 then synthesized the relevant points of Newbury J.A.'s analysis in *H.(U.V.)*. Those points generally suggest that the court assess the amount of support payable by the biological parent, which is not to be offset by any amounts payable by a stepparent. Once the biological parent's support obligations are determined under s. 3 of the Guidelines, the analysis moves to the stepparent, who may be ordered to pay additional support in order to maintain the children's standard of living.

[51] Claimant's counsel relies in particular on the first bullet point at para. 30 of *Sullivan* as follows: "Both the stepparent and natural parents, or at the least, evidence relating to their circumstances, should be before the court."

[52] The circumstances in *E.Z.* are more similar to the facts of this case. The parties had been married for three years when a child was born. The husband assumed the child was his and stood in the place of a parent for this child for more than three years before the parties separated in June 2012. In or around June 2013, it was conclusively determined that the husband was not the child's father.

[53] The mother then applied for an interim order of child support. She argued that the husband had continued spending time with and financially supporting the child through September 2014. The husband claimed not to have had any contact with the child since October 2012, and the parties had signed a separation agreement on or about June 1, 2012 that confirmed there were no children of the marriage. The parties were involved in a divorce proceeding in

Ontario and a divorce was granted in September 2014. The mother did not seek child support at that time, but the judge noted that paternity was not necessarily determinative of child support obligations and specifically left open the matter of corollary relief in the divorce proceeding. The mother then moved to British Columbia and the court inferred the parties had agreed that there would be no further relationship between the child and the husband, who remained in Ontario.

- [54] The child support application was brought in February 2016. While the husband conceded he had voluntarily assumed the role of a parent for a time, he said he did so on a mistake of fact that vitiated his consent.
- [55] The court first analyzed the factors relevant to whether a person stands in the place of a parent. At para. 14, it noted that the intention of the person to stand in that role, and in particular whether their actions are voluntary, is relevant but is only one factor of a number of factors to consider. Following *Chartier*, it determined that other relevant factors include (at paras. 14-15):
- a) Whether the person provides financially for the child or disciplines or guides the child as a parent;
 - b) Whether the person represented to the child and others that he or she is responsible as a parent to the child;
 - c) The nature or existence of the child's relationship with their biological parent; and
 - d) The opinion of the child regarding the relationship with the stepparent.
- [56] The court then discussed *T.A. v. R.C.A.*, [1999] BCJ No. 1382 (SC) ("T.A.") at length, which held that a husband was not obligated to pay child support for a child determined not to be biologically his because he did not "intend" to stand in the place of a parent. In that case, the evidence was that the parties married in the first place because the husband believed he had impregnated the wife before marriage. The father in *T.A.* relied on a passage from *Laraque v. Alloodoo* (1992), 44 R.F.L. (3d) 10 (NWTSC) ("*Laraque*") cited at para. 23 of *Chartier*, that "it takes a properly informed and deliberate intention to assume parental obligations for support of a child, on an ongoing basis".
- [57] The court in *E.Z.* did not accept that point. Rather, the judge in *E.Z.* distilled that the point the court in *Chartier* was trying to make by including that passage of *Laraque* was not to drive home the intentional element of accepting a role as a parent but rather to confirm that once a person stands in the place of a parent, that responsibility cannot be shed at will. In other words, that quote was included as an illustrative flip side to the main point that once a person stands in the place of a parent, that role cannot be easily abandoned.

- [58] Finding specifically that T.A. had been wrongly decided, the court in E.Z. followed G.N.P. v. L.A.G., 2001 NSSC 165 ("G.N.P.") instead. In that case, twin boys were born as a result of an extramarital affair and the husband had stood in the place of their parent for more than 10 years despite not having been aware they were not his biological children. The court in G.N.P. held at para. 23 that:

There can be no conclusion but that Mr. G.N.P. was de facto the parent of these twin boys during the entire marriage and for some considerable time after the separation. Some ten years. He fulfilled that role completely because he thought he was the boys['] biological father . I find that, according to Chartier, that alone would necessitate a finding that Mr. G.N.P. stood in the place of a parent to these children. But even if I were in error in coming to that conclusion, I would find that Mr. G.N.P. continued to fulfill the role of father even after he had some doubts about his paternity, and even after a D.N.A. test confirmed he was not the biological father.

- [59] Based on an analysis of these authorities, the court in E.Z. held at para. 28 that the husband stood in the place of a parent thus activating his obligation to pay support. However, the court then turned to s. 5 of the Guidelines to determine the amount of support the husband was required to pay, noting that the amount of support calculated under s. 5 (support payable by a person who stands in the place of a parent) is discretionary in a way that support calculated under s. 3 (support payable by a biological parent) is not. Previous decisions have confirmed that the discretion under s. 5 includes the option of reducing child support obligations to zero in appropriate circumstances.
- [60] The court in E.Z. ultimately described the mother's application for support as one seeking "to have the entire burden of support fall to her former spouse, the sadly deceived and abandoned non-biological parent" and that to do so would be unjust and unfair. It reiterated that the relationship had been short and that the wife had intentionally relocated from Ontario to BC. It also doubted at para. 34 that, given the child's young age and the duration of the relationship after he was born, he had "formed any durable expectations" of his stepfather. The court noted, as well, the "total absence of evidence in the record before me concerning the identity or circumstances of the boy's natural father", including whether attempts had been made to identify or contact him. Finally, it pointed out that the mother had a new live-in partner who was also standing in the place of a parent but no information was provided as to his circumstances, either.
- [61] Ultimately, "[i]n light of the complete absence of evidence concerning the means and circumstances of other parents who owe a legal duty to meet the needs of the child, in fact, and having taken into account all of the factors peculiar to this case that I have referred to above as required by Chartier", the court reduced the husband's child support obligations to zero (at para. 37). This was a different result than in G.N.P., where the stepfather's obligations were ordered to be lower than the Guidelines table amount but some amount was still ordered to be payable.

- [62] In my view, there is no doubt that the claimant stood in the place of a parent and the fact that he was unaware that T. was not his child does not change this determination. I explicitly reject the claimant's argument that the one-year threshold period under s. 147(4)(a) of the FLA starts when the party becomes aware that they are not the biological parent. The caselaw clearly does not support that position.
- [63] I do acknowledge that mistaken paternity is a relevant consideration in exercising my discretion under s. 5 of the Guidelines to make a support order. However, I do not agree that, in this case, that factor should reduce the claimant's obligation to pay child support for T.
- [64] In particular, unlike in E.Z., there was a very long relationship between the claimant and T. as father and child, and they remain physically proximate and in contact, though the claimant's parenting time has been inconsistent. It is not disputed that the claimant has provided some support to T. since separation and even after learning definitively that T. was not the claimant's biological child. Given the length of the relationship, T.'s age, and continued financial assistance from the claimant, among other things, I have little doubt that T. has developed significant expectations as to the claimant's obligation to support him, financially and otherwise.
- [65] There was no evidence before me as to the identity of T.'s biological father, or whether he is even known. That was one significant issue raised in E.Z. However, in that case, there was also another stepparent with whom the child was living whose circumstances has not been presented. Ultimately the court concluded that the husband's support obligations were zero given the absence of evidence about the "means and circumstances of other parents" and accounting for "all of the factors peculiar to this case" (para. 37, emphasis added). I view E.Z. as sufficiently distinguishable such that a different result is warranted in this case.
- [66] I also reject the claimant's argument that Sullivan imposes a condition precedent that a biological parent's circumstances be before the court before a court can make a child support order binding a stepparent. The court in Sullivan does not use that language, and none of the caselaw brought to my attention extrapolates such a strict principle or applies a condition precedent analysis. To impose a condition precedent as suggested by the claimant would unduly interfere with the court's overarching obligation to fashion orders that put children's best interests at the forefront. It is preferable to have the circumstances of all "parents", as that term is defined in s. 146 of the FLA, before the court on a child support application, and in some cases, the absence of information about a parent's circumstances will result in no order for child support payable by a stepparent. This is not an exercise of imposing conditions precedent, however, but rather a discretionary decision to be decided on all relevant factors in each individual case.
- [67] I also note that the transcript of submissions on the DNA testing application was included in the record, and counsel for the claimant at that hearing represented to the court that the DNA test was being sought primarily for estate planning purposes, and generally so that the parties would "know the truth". Counsel for the claimant at that hearing cited specific

passages in at least one authority where a DNA test was ordered in which the applicant had acknowledged that the result of a parentage test would not have any impact on their willingness or obligation to pay child support. I do not accuse claimant's counsel of misleading the court on the prior application, and it is true that the notice of family claim had been amended by that point to remove the reference to T. as a "child of the marriage". However, I take counsel's submissions on the DNA test application as an acknowledgment of the claimant's stated intentions until relatively recently to continue to support T. regardless of parentage. My order is consistent with that intention.

- [68] The claimant will pay child support on the basis of two children of the marriage from and after separation. Based on the claimant's imputed incomes determined above, that results in a monthly obligation of \$1,789 for 2024 and \$1,866 for 2025 onwards.

Spousal Support

- [69] The respondent claims spousal support on compensatory and non-compensatory grounds. This was a 20-year relationship, and while the children were young, the respondent had primary responsibility for their care, particularly given that the claimant's job regularly took him out of town for long periods. She did start working full time once the children were older. The claimant worked throughout.
- [70] The general principles underlying an interim award of spousal support are fairly settled. Once a *prima facie* case of entitlement is made out, as the court instructed in *Den Duyf v. Den Duyf*, 2024 BCSC 2151 at para. 136:

On applications for interim spousal support, the primary considerations are the applicant's needs and the respondent's ability to pay. The court does not embark on an in-depth analysis of the parties' circumstances which is best left for trial. Rather, it seeks to achieve "rough justice". *Robles v. Kuhn*, 2009 BCSC 1163 [Robles] at paras. 12(1) and (2).

- [71] If there is entitlement, the goal is to try to maintain the party claiming spousal support's standard of living at the level enjoyed during the relationship if the payor can afford it. Contested issues of fact militate away from an interim spousal support order.
- [72] The claimant's only argument presented in opposition to an order for spousal support is that there is no money left over when child support is taken into consideration. This argument, of course, was based on an imputed income of \$82,211 for the claimant. He did not contest entitlement, though he did argue, gently and without clear evidence, that the respondent is underemployed.
- [73] I agree that the respondent has a *prima facie* entitlement to spousal support on the basis that she was the children's primary caregiver in their early years and continues to earn significantly less than the claimant despite having more recently rejoined the workforce full time. Based on the income I have imputed to the claimant, the Divorcemate calculation for spousal support indicates a low range of \$0, a medium range of \$336, and a high range of

\$863 for 2024 and a low range of \$272, a medium range of \$718, and a high range of \$1,164 for 2025, when child support payments are taken into consideration.

- [74] I order spousal support payable by the claimant from and after mid-March 2024 at the mid-range. On the first day of the month from and after March 1, 2026, the claimant will pay to the respondent \$718 in monthly spousal support. Arrears are dealt with below.
- [75] Given my order regarding spousal support, I decline to make any specific order requiring the claimant to contribute to the mortgage for the family home or other home expenses. The respondent made several arguments about why continuing to pay the upkeep expenses for the family home was unfair to her, including some allegations that her carrying costs are higher because the claimant refused to cooperate in the renewal of the mortgage in January 2025 and thus it was renewed at a higher interest rate than was originally offered. The evidence on these points is not clear enough for me to make a determination on this interim application. I was not taken to any authority considering an order like the one the respondent seeks. I also agree with the claimant that part of the purpose of spousal support is to enable the recipient spouse to pay for the additional home expenses that follow a separation so that their standard of living can be maintained. Finally, the respondent's payment of those expenses justified me not attributing any rental income to her for support purposes. As such, the spousal support order is sufficient, at least on an interim basis.

Retroactive Support

- [76] The claimant says this is an inappropriate forum in which to assess any child or spousal support arrears. Particularly given the unattributed payments made by the claimant over time, he says it is more appropriate to account for these payments at trial when a full offset of all amounts paid by both parties can be analyzed. He deposes that he has paid the respondent \$29,500 since March 2024 but it appears he was setting off rental income from these payments in a way that is not clear on the record, and few receipts for the payments made were drawn to my attention.
- [77] The claimant's Form F8 financial statement filed September 25, 2024 claims that he is paying \$1,300 in monthly child support. When the claimant's F8 was served, respondent's counsel quickly responded asking for proof of those payments, since the respondent denied having received anything other than sporadic financial contributions. It appears that the claimant admits these payments were not in fact being made, since he deposed in his Affidavit #2 made June 30, 2025 at para. 16 that "I estimated the child support payment in my financial statement to be \$1300.00 per month as that's roughly what the amount was after subtracting the rent that I had received." The reference to rent in that paragraph is confusing, but regardless, he appears to acknowledge the child support expense listed in his F8 was an estimate and not a reflection of actual payments being consistently made.

- [78] The respondent says she has received \$8,106 from the claimant in total since separation, though that number is arrived at by way of a complicated offsetting of payments and rental income.
- [79] While the amount and proper attribution of payments made by the claimant to the respondent separation are unclear, I do not find that is a reason not to make an award for arrears more broadly.
- [80] Rather, it is reasonable on an interim basis to deduct the \$29,500 the claimant says he has paid from the arrears owing. I was not able to determine which party's payment evidence was more reliable on this application so I have taken the conservative route. I deduct the amount from the child support arrears owing, since the claimant agreed that some child support was owing but denied liability for any spousal support. Counsel for the claimant also acknowledged in submissions that where spousal support and child support are both owing, contributions by the payor are first attributed to child support and then to spousal support.
- [81] This retroactive support order is made without prejudice to either party's ability to argue at trial for a different allocation, attribution of payments made, or amount of what the claimant has in fact paid. There was not enough evidence on the record for me to do that in a more complete way but I remain satisfied an award for arrears is appropriate on the basis of the claimant's best case scenario. The respondent has been seeking payment of child and spousal support since at least May 2024.
- [82] I calculate the arrears owing, as follows. I have used the respondent's income for 2024 to calculate the 2024 arrears and for 2025 to calculate the 2025 and 2026 arrears. Similarly, I have used the same employment income attributed to the claimant for 2024 and 2025, absent other, better evidence. The only difference in the income attributed to the claimant in each year is the rental income. I have also assumed that both child and spousal support were owing for one half of March 2024, since there is a disagreement between the parties as to whether separation occurred on March 1 or March 17 that I am not able to resolve on this application:

2024

2025

2026

(Jan & Feb)

Total

Child Support

\$16,995.50

\$22,392.00

\$3,832.00

\$43,119.50

Spousal Support

\$3,192.00

\$8,616.00

\$1,436.00

\$13,244.00

Deduction (from child support)

\$29,500.00

Total

\$28,863.50

[83] I also make the arrears orders without prejudice to the respondent's ability to argue for unequal division of property based on an alleged overcontribution to the family home's expenses during the relevant period. In particular, as noted, the respondent made a series of submissions related to the claimant's failure to cooperate in renewing the mortgage in January 2025 as resulting in a higher interest rate being imposed by the bank and thus increased expenses. My view is those expenses will be addressed on an interim basis by the spousal support payments, including payment of arrears, but I decline to make any other compensatory award for those amounts at this stage. That is a matter for trial.

[84] Finally, the respondent made several arguments related to the amounts owing in principal and interest on the parties' various lines of credit, and income received by both parties from the rental units in the family home. Again, I see no clear basis on which to make a related award at this time other than by way of imputing rental income to the claimant as discussed above. There will obviously have to be an accounting of the parties' withdrawals from joint credit facilities and respective interest payments as well as rental revenue received for the purpose of property division, but that is more appropriately done on a final determination.

Document Production

[85] Schedule A to the notice of application sought 18 categories of documents. In December 2025, respondent's counsel sent an updated list of document demands. The parties agreed that the items sought in all but two paragraphs of the December 2025 letter could be ordered produced by consent. The two categories of documents that remained disputed are item 5 and item 20. Item 5 relates to supporting documentation for items and expenses the claimant deducted for tax purposes in 2021 through 2024. Item 20 seeks a copy of monthly

account statements/etransfer records/cheques/bank drafts to support the child support payments the claimant says he has made.

[86] With respect to item 5, counsel for the claimant was concerned that the documents sought did not exist, in which case ordering their production would not be appropriate. To the extent that they exist, she acknowledged they were relevant.

[87] With respect to item 20, counsel notes that the claimant has agreed to produce bank statements and believes that should be adequate.

[88] The documents sought in item 5 are relevant though broad, and the claimant has deposed that he has at least some of those documents. Therefore, I order the claimant to produce the documents that fall into the categories outlined at item 5 that are in his possession or control.

[89] I agree with the claimant that the documents sought in item 20 are at least in part duplicative. I also note that it is in the claimant's interest to produce all evidence he has to support the payments he says he has made to the respondent since separation, otherwise they will not be credited to him. The application with respect to item 20 is dismissed, without prejudice to the respondent's ability to seek further production in follow up to the financial disclosure that she receives pursuant to this order.

Summary

[90] I make the following interim orders:

- a) The claimant's income is imputed to be \$120,618 for 2024 and \$122,918 for 2025 onwards.
- b) The respondent's income is determined to be \$36,514 for 2024 and \$50,047.29 for 2025 onwards.
- c) The claimant will pay to the respondent monthly child support of \$1,866 for both children commencing March 1, 2026.
- d) The claimant will pay to the respondent monthly spousal support of \$718 commencing March 1, 2026.
- e) By June 30, 2026, the claimant will pay to the respondent child support arrears in the amount of \$13,619.50. This accounts for the \$29,500 that the claimant says he has paid to the respondent since separation.
- f) By June 30, 2026, the claimant will pay to the respondent spousal support arrears in the amount of \$13,244.
- g) By March 20, 2026, the claimant will disclose the documents sought in all paragraphs other than item 20 of the letter from respondent's counsel to claimant's counsel dated December 3, 2025 attached as Exhibit I to the respondent's Affidavit #6 filed January 20, 2026.

[91] The claimant's application filed June 24, 2025 is adjourned generally.

[92] Given her substantial success on this application, the respondent is entitled to her costs of this application in any event of the cause but not payable forthwith. While it was included as relief sought on the application, the respondent did not press her request for a fine. For that reason, as well as because the vast majority of the document production items are going by consent, I declined to award a fine payable by the claimant at this time. The costs award is sufficient in the circumstances.

"Associate Judge Peck"

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