
CANADA / JUDGMENT

J.V. v. C.H.

2018 BCSC 1732

COURT

Supreme Court of British Columbia

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2018 BCSC 1732 J.V. v. C.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.V. v. C.H.,

2018 BCSC 1732

Date: 20181011

Docket: E51876

Registry: New Westminster

Between:

J.V.

Claimant

And

C.H.

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

P.W. Cote

Counsel for the Respondent:

P. Kenney, Q.C.

Place and Date of Trial:

New Westminster, B.C.

April 9-13, 2018

Place and Date of Judgment:

New Westminster, B.C.

October 11, 2018

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I. Introduction

[1] The main issues in this case concern child support and certain compensation payments.

- [2] Child support for the two adult daughters of this marriage are the most significant issues in this case. The eldest child, R.V., turned twenty-three years old on August 30, 2018 and the youngest, M.V. turned nineteen years old on May 28, 2018.
- [3] For R.V., retroactive child support is at issue. The respondent wife, C.H., has agreed that R.V. will no longer be a "child of the marriage" as of the date of trial.
- [4] For M.V., both current and retroactive child support are at issue. As of the date of trial, M.V. was not pursuing further education on a full-time basis but the respondent mother is concerned that M.V. is not able "by reason of illness, disability or other cause to withdraw from [the parents'] charge or to obtain the necessities of life": Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), s. 2(1) [the Act].
- [5] The parties have agreed to the division of a considerable amount of family property, although some issues remain for determination by the Court. The major family asset was the family home which has been sold with the resulting proceeds of sale being distributed between the parties.
- [6] I have also been advised since the close of the trial that some family property issues which had apparently been agreed upon are now contentious. I will address the Hyundai Elantra issue later in these reasons.
- [7] A divorce order was granted to the parties during the trial.
- [8] The only witnesses at trial were the parties and Brent Perry, who, together with his wife have assisted the respondent financially since the separation of the parties which will be discussed later in these reasons. The relationship between the respondent and Mr. and Ms. Perry is that of a lengthy friendship, Ms. Perry and C.H. having been friends since childhood.

II. Background

- [9] The parties began to cohabit in 1989, married in June 1993 and separated in June 2014. The claimant husband is currently 55 years old and the respondent is 50 years of age.
- [10] The claimant was employed as the general manager of a retirement home in South Surrey until 2013 when the retirement home was sold and he was replaced by the new owners. He subsequently attempted to find work in the same field without success. He then pursued education to become a licensed strata property manager. He achieved this goal in June 2014. He worked for a major strata management company until July 2016. Subsequently he was unable to work for a period of time due to surgery and recovery before he commenced working at another property management company. He was also injured in a motor vehicle accident which affected his income earning abilities since separation of the parties.
- [11] Since leaving his employment at the retirement home in South Surrey, the claimant's income has regressed. In 2017 he earned \$66,000.

- [12] The respondent has been employed by the Surrey, B.C. Library Department since 2008, first on a part-time basis and since 2011 on a full-time basis as a fundraiser. She has previously graduated from BCIT with a fundraising certificate. In 2017, the respondent earned slightly more than \$95,000.
- [13] As of the date of separation, R.V. was two months short of nineteen years old and M.V. was fifteen years of age.
- [14] Since separation, the daughters have lived primarily with their mother, although there have been periods of time when M.V. was residing elsewhere. Her alternative residences will be explained later in these reasons.
- [15] J.V.'s relationship with his children has been strained. He has rarely seen his daughters which appears from the evidence to be the choice of the daughters, however, the amount of parenting time of J.V. has had is not relevant to his obligation to pay child support if entitlement is proven.

A. Orders and Payments Made Relating to Child Support

- [16] At a judicial case conference ("JCC") held November 23, 2016, a consent, without prejudice, order was granted that the claimant pay interim child support of \$400 total per month for two children.
- [17] By consent and pursuant to an order of Master Caldwell made October 26, 2017, child support for both children was to be paid on a without prejudice basis in an amount of \$986 per month commencing November 1, 2017.
- [18] Prior to the orders being made for child support, the claimant made periodic payments to the respondent for child support in 2015 and 2016 which amounted to \$2,750 for both children, R.V. being considered by the claimant as a child of the marriage only up to her nineteenth birthday in August 2014.
- [19] M.V. attended Venture Academy for four months in 2015 and lived with the Perry family for seven months between August 2016 and February 2017.
- [20] Based upon the claimant's Federal Child Support Guidelines (SOR/97-175) [Guidelines] incomes for 2014, 2015 and 2016 of \$36,689, \$66,111 and \$56,480 respectively and subtracting amounts due for the two periods during which M.V. was not living with her mother, the claimant submits that the total arrears owing by him amount to \$6,784.
- [21] The respondent submits that even though M.V. may have been living at Venture Academy and with the Perrys during two separate periods of time, retroactive child support should still be payable during those periods as the respondent continued to incur expenses for M.V. including for a cell phone, travel to and from Kelowna while M.V. was at Venture Academy and other expenses.

B. Facts Relating to Adult Child Support for R.V.

- [22] The respondent is not seeking current child support for R.V. beyond May 1, 2018 but does seek retroactive child support.
- [23] In April 2014, R.V. went through a critical period respecting her emotions and upon separation, even though R.V. was not pursuing post-secondary education, the respondent wanted to keep the family home for the betterment of the children, even though the family was in a difficult financial position to continue to maintain the home.
- [24] After graduating from secondary school, R.V. took a year off from school before attending Simon Fraser University ("SFU") on a part-time basis from the fall of 2015 until the spring of 2018. R.V. decided not to return to university in the fall of 2018.
- [25] During 2014 to 2017 R.V. worked part-time at a Surrey library on call and has earned between \$15,621 and \$18,770 per annum in those years. There is no evidence which would indicate that R.V. is unable to continue with her employment with the Surrey Library. Counsel for the respondent also makes reference to R.V. having received "outstanding performance reviews at work".
- [26] R.V. continues to live with her mother, most recently in a townhouse in South Surrey which the respondent purchased in 2018 after the sale of the former family residence. R.V. pays rent to stay with her mother of \$350 per month. She purchased a vehicle and pays the cost of insurance and maintenance of the same and generally is able to pay her living expenses, albeit the rent she pays her mother is modest. R.V.'s mother testified that R.V. buys her own clothes but has had no expenses for tuition and books as those expenses were covered by RESP funds for the children.
- [27] C.H. testified that R.V. had savings of \$5,000 and based upon a budget prepared by R.V., her expenses are being covered by her income.
- [28] R.V. has suffered from anxiety and depression for several years, has been described as introverted, sensitive and an over achiever. She has attended counselling and has been taking prescribed drugs for her anxiety and depression which has improved her condition. There is no medical evidence which could indicate an impairment for R.V. working full time. C.H. also testified that R.V. had withdrawn from some courses at SFU due to her extreme anxiety but she has also been able to successfully complete some of her courses.
- [29] C.H. testified that R.V. was not able to care for herself due to her anxiety and depression. J.V. has had very little contact with R.V. since separation and it is apparent that C.H. has been the major source of support for R.V. J.V. testified R.V. is not really interested in university and is more interested in playing video games.

- [30] As stated previously in these reasons, C.H. acknowledges that child support for R.V. is claimed only for the period up to May 1, 2018 and so the only child support sought in respect of R.V. is retroactive. The claimant has acknowledged, however, that R.V.'s circumstances may change such that in the future she may become a "child of the marriage" once again. He also testified that R.V. is intelligent and if she were interested in continuing with her education, she is able to do so.
- [31] R.V. continues to attend group counselling for her anxiety and depression.
- [32] R.V. is not returning to school, i.e., SFU, in the fall of 2018. There is no evidence of attempts by R.V. to obtain employment other than her part-time position with the Surrey Library.
- [33] To date, the costs for R.V.'s post-secondary education have been covered by an RESP which had been purchased by the parties, however, C.H. has testified that very few funds remain in the RESP for possible future tuition expenses.

C. Facts Relating to Child Support for M.V.

- [34] As stated above, M.V. turned 19 years of age on May 28, 2018. M.V. has also struggled with behavioural issues and based upon the evidence of C.H., depression, panic attacks and agoraphobia. During 2015, her mother testified M.V. became "particularly challenging" as she often found herself in risky situations with alcohol and drugs, and in intimate situations. J.V. described M.V. as a "party girl" and that she prefers that lifestyle to going to school.
- [35] She has lived with her mother since separation of the parties save for two different periods.
- [36] The first period of time when she lived away from her mother was during what has been described as M.V.'s "particularly challenging" period between May 2015 and August 2015. During that period, M.V. attended Venture Academy in Kelowna which is a residential institution helping troubled teens experiencing family conflict, substance abuse, anxiety and other behavioural problems. The students attend a 30 day assessment and intervention, receive substance abuse treatment, behavioural treatment and education. Leading up to M.V.'s attending Venture Academy, her mother realized the extent of the risky situations in which M.V. had found herself and researched facilities which may be able to provide services.
- [37] The cost for M.V. to attend Venture Academy was substantial: over \$30,000. Prior to M.V. attending, the parties and Mr. Perry met and agreed that it would benefit M.V. to attend Venture Academy. C.H. and Mr. Perry testified that J.V. agreed to pay one-half of the cost whereas J.V. testified he had no recollection of a division of that cost. M.V. did attend and the total cost of attending the Venture Academy was \$31,018; \$13,600 of which was contributed by J.V. with the balance of \$17,418 being paid by Mr. and Ms. Perry. The advance of funds by Mr. and Ms. Perry was, according to the testimony of C.H. and Mr. Perry, a loan, although the Perrys have not demanded payment and are hopeful C.H. will be able to make payments in the future on that debt.

- [38] C.H. testified that M.V. has calmed and made improvement in her behaviour since attending Venture Academy.
- [39] The second occasion when M.V. lived separate from her mother was between August 2016 and February 2017 when she lived independently in a basement suite at the home of Mr. and Ms. Perry. C.H. testified that the plan was for M.V. to experience more independence which, based upon the evidence of Mr. Perry, appeared to be the case. During this time, M.V.'s boyfriend moved in with M.V. M.V. was working at a neighbourhood restaurant and paid rent. When her boyfriend moved in with her, they shared the rent. During this period of time, M.V. was under the age of majority.
- [40] M.V. attended school only on a part-time basis during the time she lived with the Perrys.
- [41] J.V. submits that during both of these periods, M.V. was not under the care and control of her mother and so child support should not be payable respecting M.V.
- [42] M.V. has attended the Surrey Academy of Independent Learning program of the Surrey School District, which is considered independent programming, as according to her mother, M.V. was not able to succeed in a "mainstream school" where she had previously attended. She has attended counselling for several years.
- [43] As of the date of trial, M.V. was not attending school and worked part time. As her education stands, M.V. has not yet obtained credit for any grade ten courses. C.H. testified that the reasons for M.V.'s lack of success has been her ongoing emotional and psychological issues which include anxiety, depression, agoraphobia, attachment issues and problems concentrating. In a self-prepared resume, M.V. has referred to being "excellent with computers", keyboarding and interpersonal skills, among others.
- [44] As was the case with R.V., there is no medical evidence before the Court regarding M.V.'s psychological issues. The respondent has testified that M.V. had been prescribed medicine for depression and anxiety but as of the date of trial, she was not consuming the same.
- [45] The respondent has testified that "M.V.'s mental health precludes concentration, she has nightmares cannot attend work shifts regularly".
- [46] M.V.'s income for 2016 was \$5,308 and in 2017 was \$8,114 for part-time employment. She has recently obtained employment on a part-time basis as a hostess in a local restaurant.
- [47] Regarding both R.V. and M.V., they continue to reside with their mother in a townhouse purchased by the respondent, using funds from the sale of the family home as her equity in the purchase. The respondent purchased a three bedroom townhouse so that there was room for her and her two daughters.

III. Law

A. Law Relating to Child Support

[48] It is not in issue that the onus is on the respondent to prove entitlement to child support: *Classen v. Anima*, 2011 BCSC 868 at para. 6. Child support in this case is claimed under s. 2(1) the Act in which the definition of a "child of the marriage" is as follows:

child of the marriage means a child of two spouses or former spouses who, at the material time,

- a) is under the age of majority and who has not withdrawn from their charge, or
- b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;

[49] Being unable to withdraw from a parent's charge due to illness or disability usually requires some form of medical evidence, either physical or psychiatric, to support a finding that a child is unable to withdraw. The definition of "child of the marriage" in the Act allows for any "other cause", i.e. other than illness or disability, impeding the ability of a child from being able to withdraw. In *Dumont v. Dumont*, 2017 BCSC 668, Punnett J. considered the term "other cause" and referred to *Bragg v. Bragg*, 188 Nfld. & P.E.I.R. 202 (U.F.C.) (CanLII):

8. The case law is clear that "other cause" is not limited to illness or disability. If a child 19 years or older is still dependent on his or her parents, that child can still be a child of the marriage and entitled to support. See, for example, *Barber v. Barber*, (1995), 137 Nfld. & P.E.I.R. 36 (S.C. Nfld. T.D.) where Dunn, J. said at p. 42:

"I do not think the legislation is intended to mean the "bare" necessities of life such as food and shelter. Other pieces of legislation recognize the importance to society of individuals being adequately equipped and obtaining the necessary skills to be productive and contributing members. One expects that parents in our sophisticated and fast developing technological and academic oriented world community will aid their children in achieving this common societal goal."

...

10. In *O'Keefe v. Clarke*, (1994), 122 Nfld. & P.E.I.R. 178 at pp. 179-180, I accepted the approach of Freeman, J.A. who said in *Martell v. Height* (supra):

I believe Canadian courts now are much more flexible in confirming child support for longer periods while children pursue their education. The governing principle, I believe, is reasonableness.

....

12. In a recent case, *Gamache v. Gamache* (1999), A.J. No. 474, 49 R.F.L. (4th) 258 at p. 261, Madam Justice M. Trussler concluded that the case law suggests:

... that a parent does not have an indefinite obligation to support a child who is attending school or is unemployed or underemployed. Instead, a parent has an obligation to assist the parent on whom the child is dependent through a reasonable transition period. What is a reasonable transition period is a question to be determined on the facts of each case. In all the cases, the emphasis is placed on the inability of the child to support him or herself.

IV. Discussion

A. Retroactive Child Support for R.V.

- [50] Although the decision of *D.B.S. v. S.R.G.*, 2006 SCC 37, is clearly the most significant decision in setting out the core principles underlying retroactive child support obligations and has been referred to and followed on hundreds of occasions, that case did not deal with the most important factor in this case: whether the children remain or remained children of the marriage after turning the age of majority.
- [51] The most significant evidence regarding whether or not R.V. is and has been able to withdraw from the charge of her mother or obtain the necessities of life is as follows:
- i. R.V. has attended college or university on part-time basis for four years without distinction and apparently without a goal in mind. The years in post-secondary education followed a year out of education or the work force.
 - ii. She has worked part-time throughout the four years she attended and has earned sufficient funds to be able to pay a very reasonable amount of rent to her mother, purchase, insure and maintain a vehicle and meet other expenses.
 - iii. Other than continuing to work at the Surrey Library, there is no evidence that she has attempted to pursue any other type of employment, either part time or full time.
 - iv. According to her work evaluations, R.V. has received outstanding performance reviews which would indicate she is able to cope with and succeed in her position, whether she continues to work part time or takes a full time position.
 - v. Although R.V. has had serious issues in the past regarding anxiety, depression and other maladies, her mother has stated that R.V. is no longer dependent upon prescriptions. As well, there is no diagnosis of any "illness" or "disability" which would make her unable to withdraw from the charge of her parents, specifically her mother. As well, the facts of the case do not disclose any "other cause" that suggest R.V. is unable to withdraw from her parents' charge. Although she continues to attend counselling, the whole of the evidence indicates she is capable, intelligent and well-organized such that she could support herself in the community.

vi. Although not a necessity in determining whether or not a child over the age of majority is in the charge of his or her parents, medical evidence, either physical or psychiatric, is a factor in many cases to support such a claim for support. In this case, although demands have been made for any such evidence, none has been produced by the respondent which leads to an assumption that there are no medical reasons impeding R.V. from being able to withdraw from the care of her mother.

[52] Counsel for J.V. has referred to the decision of *M.A.T. v. K.P.T.*, 2017 BCSC 1603 [M.A.T.], in which the child, referred to as "A", had been diagnosed with social anxiety disorder, panic disorder, depression and agoraphobia with supporting evidence of a medical expert. The disorders were not unlike those experienced by R.V., save that R.V. was not formally diagnosed. Fleming J. concluded, at paras. 167 and 168:

[167] Based on my assessment of all of the Medical Evidence and the evidence of both parties, I am satisfied A. remained a child of the marriage until on or about March of 2016, because of mental health issues. Those issues prevented her from working full time or attending post-secondary school. The range and seriousness of A.'s symptoms at times, in 2013, 2014, extending into 2015, the impact of her withdrawal from a medication in or about May or June 2015, the claimant's observations of her condition in the summer of 2015, the frequency of her appointments with Ms. Ehrlich until December 2015, and the opinion of Dr. Kjernisted support this finding. I have no doubt the breakdown of the parties' marriage, their polarized relationships with her, and her estrangement from the claimant played a role in undermining A.'s emotional and psychological stability. At the same time, I expect her non-compliance and school issues starting in early adolescence also may have reflected symptoms of anxiety, depression, and poor attention, concentration and organization.

[168] q.Had A. testified, her evidence may have addressed not only her day to day functioning but also the apparent inconsistency between the ongoing symptoms of social anxiety and agoraphobia she reported to Dr. Kjernisted in March 2016, and the respondent's much more positive evidence about A.'s actual circumstances. Accepting his testimony about A.'s overall improvement, her travel to and from California, and her ability to complete the steps necessary to identify and apply to a suitable college, I conclude, any ongoing symptoms were not disabling by then. At that stage I accept she was engaging in the steps necessary to attend post-secondary school.

[53] Also of import are the many factors enumerated by then Master Joyce in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.) (CanLII), in determining whether a child's educational pursuits justify retaining the status of child of the marriage including whether the child's career plans are "reasonable and appropriate", "whether or not the child has applied for or is eligible for student loans or other financial assistance" and the child's academic performance. The list of Farden factors is not a check-list: *Nordeen v. Nordeen*, 2013 BCCA 178 at para. 17. In any event, there are significant considerations in respect of which R.V. falls short of having been considered a "child of the marriage" since attaining the age of majority.

- [54] In the case of A in the M.A.T. decision, there was abundant medical evidence of the mental health issues which prevented A from working full-time or attending post-secondary school. That is not the case with R.V. R.V. has been attending at university, albeit on a part-time basis for several years. She has shown an ability to succeed at her part-time occupation with no effort to work full-time. R.V. has shown an ability to manage her financial affairs. There is evidence that she can succeed at university and can succeed in her employment. That level of activity has continued since she concluded her year of inactivity following graduation from secondary school.
- [55] I conclude the R.V. has not been a "child of the marriage" in that she was able to withdraw from the charge of her parents, specifically her mother, after the separation of the parties and that she has not, since separation been a "child of the marriage". As stated earlier in these reasons, if factors change, R.V. may be considered to be a "child of the marriage" in the future.

B. Retroactive Child Support for M.V.

- [56] When the parties separated, M.V. was fifteen years old. J.V. does not dispute responsibility for child support for M.V. since separation save for the two periods of time when M.V. was not living with her mother.
- [57] In the time since the parties separated, M.V. has experienced depression, panic attacks, agoraphobia and other behavioural problems. She generally abandoned her responsibilities as a secondary school student and, as one of her parents stated, was attempting to live the life of a "party girl".
- [58] Regarding the four months during the summer of 2015 when M.V. was attending Venture Academy, M.V. was clearly a troubled young person. The parties agreed that it was in M.V.'s interests that she attend Venture Academy for an intensive assessment and counselling in a residential setting in Kelowna.
- [59] The issue which arises is whether during the time she was attending Venture Academy she remained in the "charge" of her mother with whom M.V. had been residing since the parties separated. The claimant submits that during the time M.V. was at Venture Academy, M.V. received room and board and other benefits the cost of which were included as part of the tuition fees of \$31,018 which the parties had shared. The claimant, J.V., submits the respondent would not be incurring the expenses she normally would while M.V. was residing with the respondent and so during that period, he should be excused from paying child support.
- [60] I agree with the respondent that during the period of time M.V. was at Venture Academy, M.V. was unable to withdraw from the charge of the respondent. The conditions and behaviors associated with being a "troubled youth" at that time and led to her attendance at Venture Academy clearly reveal that M.V. was unable to withdraw and was placed at Venture Academy upon her parents' agreement that she required assistance and counselling in a

residential setting. M.V. may not have been living with her mother but she was still under the charge of her parents.

- [61] During the four months M.V. was at Venture Academy, C.H. continued to incur fixed expenses to maintain her home to which M.V. would return, the cost of a cell phone for M.V., the cost of travel to and from Kelowna, continuing medical costs and, no doubt, other costs.
- [62] Regarding the cost of M.V. attending at Venture Academy, I accept the evidence of Mr. Perry and C.H. that there was an agreement between C.H. and J.V. to share the cost equally. In that case, each party would be responsible for payment of \$15,509. As J.V. had paid \$13,600 of the cost in 2015, he is ordered to pay the difference of \$1,909 as part of the reapportionment which can be paid from J.V.'s portion of the remaining funds from the sale of the family home.
- [63] The parties agree that the Guidelines amount payable for child support for M.V. in 2015 was \$616.05 per month. Considering J.V. contributed to the cost of M.V. attending Venture Academy but C.H. continued to incur costs relating to M.V., I find that an appropriate amount of child support for the four months would be \$300 per month which for four months totals \$1,200.
- [64] The second period of time during which J.V. submits he should be excused from paying child support for M.V. was the period between August 2016 and February 2017 when she was living in a basement suite at the Perry residence. During that period of time, M.V. was seventeen years of age.
- [65] Again, the issue is whether, during the time she was residing with the Perrys, M.V. unable to withdraw from the charge of her mother. M.V. was still young at seventeen years old, had not finished secondary school, and was working part time at a restaurant. The purported purpose for M.V. to move away from her mother's home was, according to C.H., for M.V. to experience independence from her mother, but with her mother having the comfort of knowing M.V. was residing in the home of her good friends, the Perrys. M.V. was independent enough in that period of time in that she had her boyfriend move into the suite with her.
- [66] During this period, although she was expressing some independence, M.V. remained unable to withdraw from the charge of her mother, even though she was living in a separate residence with the good friends of her mother. As was the case when M.V. was attending Venture Academy, C.H. continued to incur costs for M.V. even though M.V. was living elsewhere. Considering the presence of the Perrys in the same home, the nominal rent paid by M.V., the Perrys' desire to help C.H. and M.V, and considering M.V.'s continuing emotional issues, M.V. remained dependent on her family and within their charge.

- [67] During the time in 2016 when M.V. was residing in the Perry residence, J.V. was earning an annual salary of \$56,480 and the support for one child according to the Guidelines would amount to \$521.80 per month. The parties should share that amount equally, i.e., \$255.09 per month for each month during 2016 M.V. lived with the Perrys. For 2017, the amount payable for one child was \$625 per month based upon J.V.'s income of \$65,907 of which one-half would be \$312.50.
- [68] The amounts ordered payable above are payable by J.V. less the amounts paid to date, including amounts which were paid under the consent order at the JCC and Master Caldwell's order of October 26, 2017 in which he ordered monthly child support of \$986.
- [69] Other than in the two periods of time referred to above, the claimant acknowledges responsibility for child support for M.V. up to her nineteenth birthday.

C. Summary of Child Support Arrears

- [70] Schedule B to the written submissions of the claimant is entitled "Calculation of Child Support Arrears". That document describes amounts of child support payable for each month since separation, the amounts paid, notes on various events including zero payable for child support for M.V. for the Venture Academy period and the time M.V. lived with the Perrys, the orders for payment of child support referred to above and references to J.V.'s income during the relevant years.
- [71] The calculation provided in Schedule B resulted in arrears of \$6,784 payable by J.V.
- [72] In her written submissions, C.H. has claimed arrears of child support which included support for two children from the date of separation. I have found that R.V. was not a "child of the marriage" after attaining the age of majority and as a result J.V. is only responsible for the amount payable for one child since separation to the date of trial. As a result, I have accepted the calculations in Schedule B, "Calculation of Child Support Arrears" submitted by counsel for J.V.
- [73] In these reasons, the Court has found J.V. to be responsible for child support due during the four month period M.V. was attending Venture Academy of \$1,200, and during the period M.V. was living with the Perrys of \$1,900.45, reached by five months at \$255.09 and two months at \$312.50.
- [74] The total child support arrears payable by J.V. is \$6,784 plus the amounts payable in the preceding paragraph for a total of \$8,684.45.

D. Current Child Support for M.V.

- [75] Being nineteen years of age as of May 28, 2018, is M.V. "under the parents' charge but unable by reason of illness, disability or other cause to withdraw from their charge or to obtain the necessities of life"?

- [76] Firstly, I refer to my previous findings regarding M.V.'s history, work record, attendances at school and the issues of depression, anxiety and other maladies which have affected her behaviour, education and relationship with her parents since these parties separated.
- [77] M.V. is currently working part-time as a hostess in a local restaurant and is not attending any school. Her attendance in recent years in various educational programs has not resulted in her achieving any credits towards grade 10 status. The parties agree that M.V. is intelligent and her lack of progress in education appears to be solely due to her reluctance to commit to a program of education. She is working part-time and there appears to be no impediment to her working full-time, which is a step she has not yet attempted to reach. Based upon all of the evidence, M.V. could well succeed and progress to at least complete the Dogwood program by making an effort.
- [78] No illness or disability prevents her from being able to work on a full-time basis or proceed to attend school full time. Is there any "other cause" which prevents her from withdrawing from her parent's charge? M.V. has endured many emotional situations and problems, has had considerable counselling and has expressed a willingness to be independent but has not taken the steps to be able to establish her independence from the charge of her parents. I do not find that any "other cause" is currently curtailing M.V. from withdrawing from her parents charge. She is earning a meagre income, there is no evidence she could not work full time, nor is there evidence of any career or educational plans in M.V.'s future.
- [79] The respondent's claim for current child support for M.V. is dismissed. As is the case with R.V., M.V.'s situation may well change such that she could once again be considered a "child of the marriage" and if so, the respondent may make an application for child support.

E. Retroactive Section 7 Special and Extraordinary Expenses

- [80] Regarding s. 7 Special and Extraordinary Expenses, the parties have agreed on responsibility for tutoring and medical costs for M.V. totalling \$4,942.10 which have been paid by C.H.
- [81] The parties have also agreed upon a distribution of responsibility for the retroactive s. 7 expenses between 2015 and 2017 on a basis of 60% responsibility to C.H. and 40% to J.V. based upon an agreed average of the parties' incomes over the relevant years. The calculation results in a credit to C.H. of \$1,976.84.

V. Compensation Calculation

- [82] The parties have reached agreement on the Municipal Pension Plan of C.H. with entitlement from 2008 to the date of separation, an RRSP rollover by the claimant to equalize holdings and CPP credits to be applied for by the parties.
- [83] In Schedule H of the claimant's written submissions, counsel has summarized compensation payments due to each of the parties which have been agreed under the following headings:

Credits to Respondent:

- Sale of Honda Pilot \$10,500
- Sale of Hyundai Tiburon 2,250
- Tiburon Insurance Payments 701
- Surrey Utilities Payments 931
- House Insurance Payments 6,680
- ManuLife Insurance Payments 3,177
- 2013 Income Tax refund 1,212
- VanCity Joint Line of Credit 9,824
- VanCity Joint Line of Credit Int. 1,444

Credits to Claimant

- 2014 Income Tax refund \$657
- Order of Master Caldwell 22,000
- Property Taxes 2,057

[84] Items to be included in the Compensation Calculation which have not been agreed upon and my findings in connection with the same are as follows:

- Venture Academy Overpayment: \$7,888

This claim relates to the payment by Mr. Perry of \$17,418 towards the cost of M.V. attending Venture Academy. The testimony of both C.H. and Mr. Perry was that the payment was a loan from the Perrys to C.H. who was not able to pay that amount at the time. J.V. disputes this amount was a loan in that the Perrys have not made a demand for payment, C.H. has made no payments in satisfaction of the loan. J.V. seeks a credit for the portion he submits C.H. should have paid, especially since C.H. has already received \$340,000 as her portion of the proceeds of the sale of the family home and did not pay any of that amount to the Perrys. Mr. Perry, who I found to be very credible, and with his wife, generally wishes to assist C.H. in financial matters. Mr. Perry acknowledged at trial that if C.H. started to repay the loan in five to ten years he would be satisfied. The advance of funds and the loan is a matter between the Perrys and C.H. and even though the Perrys are supportive of C.H., I have no reason to disagree with the evidence that the transaction was a loan. Accordingly, the claim by J.V. for \$7,888 for an overpayment on the Venture Academy tuition is dismissed.

- Payroll Deposits, June - August 2014: \$7,556

During the first three months after the parties separated, J.V.'s payroll cheques totalling \$7,556.91 were deposited into a joint bank account of the parties. J.V. seeks a credit on any outstanding support payments for that amount as, he alleges, those funds were used by C.H. for expenses. C.H. submits there is no basis in law or equity to support this claim. By the end of August 2014 the parties had refinanced and consolidated lines of credit. After a review of the bank statements included in Book 5 of the Joint Book of Documents, it would appear as though much was used to pay family debt including credit card debt but otherwise it is not possible to determine who used those funds and if so, whether there should be a credit granted to the claimant. The result is that the claim of the claimant for credit as against support obligations is dismissed. Even if I am wrong on how the funds were used and it can be determined to have been used for household expenses by C.H., those funds could be applied in the accounting between the parties but not as against retroactive child support.

· Penalties on Property Taxes: \$316

This claim should be shared equally between the parties as property taxes on jointly owned property is a family debt.

· Rental Income: \$7,215

The parties renovated the ground floor of the former family home into a separate suite which was rented out by C.H. Clearly, the home was family property and a portion of the same was used to earn income. The total rental income earned was \$14,430. What is not clear from the evidence is whether there were expenses incurred in order to rent out the suite which would have been paid by C.H. If rental expenses were incurred, the sum of the same should be deducted from the rental income. The rentals were of family property and C.H. must account for one-half of the net rentals to J.V.

[85] Finally, the parties resolved allocation of most of the chattels which were family property, save for a purple ottoman and chair as well as a Persian carpet, which, the claimant submits, he wishes to retain and that the respondent can retain any remaining items. No evidence of values has been provided to the Court and no evidence has been provided as to what has been retained by each of the parties. In those circumstances, the Court is unable to make an order for possession of the above items.

A. The Hyundai Elantra

[86] As of the closing of the trial, the parties had not reached an agreement on the Hyundai Elantra; a vehicle which was retained by C.H. following separation. That vehicle is jointly owned by the parties who are also jointly responsible for the financial charge registered against the same. Since the trial, I have been advised of an agreement between the parties in which J.V. will assign his interest in the vehicle and that the respondent will assume responsibility for the vehicle and loan with no compensation payable to either party. A condition of the agreement sought by J.V. was that he would be removed from his obligations under the loan, which was granted to the Royal Bank.

[87] In written submissions received from the respondent since trial, C.H. agrees to keep the vehicle and to be responsible for the loan, but adds that she will use her best efforts to remove J.V. from any obligations under the loan, as opposed to removing him from his obligations under the loan.

[88] It is not possible for the Court to order that J.V. is absolved from any obligations under the loan as that is a condition that only the Royal Bank can agree upon.

[89] C.H. has agreed to assume all liabilities in connection with the vehicle, which would include any repairs needed for the vehicle to once again become roadworthy and J.V. is to assign his interest to C.H.

VI. Spousal Support

[90] J.V. asserted a claim for spousal support in the notice of family claim but elected to abandon the same at trial and that claim is hereby dismissed.

VII. Further Submissions Post Trial

[91] Counsel for C.H. has provided further written submissions since the close of the trial which amount to a sur-reply and arguments that were not made at trial. I have not considered those submissions, other than those relating to the Hyundai Elantra which I agreed to accept.

VIII. Summary of Orders

[92] By way of summary, the orders made in these reasons are:

- i. For child support arrears, I order that J.V. pay \$6,784.
- ii. R.V. has not been a "child of the marriage" since attaining the age of majority and since the separation of the parties. I dismiss the respondent's claim for retroactive child support for R.V.
- iii. M.V. is not a "child of the marriage". I dismiss the respondent's claim for current child support for M.V.
- iv. M.V. was a "child of the marriage" during the four months she lived and attended at Venture Academy in Kelowna. I find that C.H. incurred costs respecting M.V. I order that J.V. pay child support of \$1,200 (\$300 per month for each of the four months).
- v. M.V. was a "child of the marriage" during the time that she rented the basement suite at the Perrys' house. The parties will split the support sum for M.V. during this time. Based on his income, J.V. will pay \$1,900.45 (\$255.09 for each of the five months in 2016, and \$312.50 for each of the two months in 2017) that M.V. lived with the Perrys.
- vi. I accept the evidence of Mr. Perry and C.H. that C.H. and J.V. agreed to split the Venture Academy tuition equally. Both parties must therefore contribute \$15,509. J.V. contributed \$13,600 in 2015. I order that J.V. pay the outstanding \$1,909 to satisfy his share.

- vii. The parties agree regarding retroactive s. 7 expenses. Their agreement sets out their respective responsibilities for M.V.'s tutoring and medical costs, the total being \$4,942.10. I make no order on these.
- viii. The parties also have an agreement to allocate the 2015-2017 s. 7 expenses 60% to C.H. and 40% to J.V. Accordingly, I order that C.H. receive a \$1,976.84 credit.
- ix. The parties have agreed respecting the Municipal Pension Plan, RRSP rollover, and CPP credits. I make no order on these.
- x. I accept the parties' agreement on the compensation payment credits under Schedule H of the claimant's written submissions. I make no order on these.
- xi. I dismiss J.V.'s claim of a \$7,888 overpayment by him on the Venture Academy tuition.
- xii. I dismiss J.V.'s claim for a \$7,556 credit against support obligations resulting from payroll deposits in June through August 2014 into a joint account.
- xiii. I order that the parties share the \$316 owed for penalties on property taxes equally.
- xiv. Regarding the rental income from the ground floor suite in the former family home, I order that C.H. account for one-half the net rental income earned to J.V.
- xv. In the absence of evidence with respect to the chattels, I make no order for possession of the purple ottoman and chair and the Persian carpet.
- xvi. I accept the parties' agreement with respect to the Hyundai Elantra and make no order to its effect.
- xvii. J.V. has abandoned his claim for spousal support and the order is hereby dismissed.

IX. Costs

[93] There has been divided success and as no party has achieved "substantial success", I order that each will bear their own costs of the action.

"Jenkins J."

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