
CANADA / JUDGMENT

K.C. v. J.B.,

2011 BCSC 1565

COURT

Supreme Court of British Columbia

DECIDED

21 September 2011

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2011 BCSC 1565 K.C. v. J.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.C. v. J.B.,

2011 BCSC 1565

Date: 20110921

Docket: 0728958

Registry: Prince George

Between:

K.M.C.

Claimant

And:

J.M.B.

Respondent

Before: The Honourable Madam Justice Gray

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Elson

The Respondent, J.M.B.

In Person

Place and Date of Hearing:

Prince George, B.C.

September 21, 2011

Place and Date of Judgment:

Prince George, B.C.

September 21, 2011

- [1] THE COURT: There are a number of applications before me brought by each of the parties to this matrimonial proceeding.
- [2] The parties were married in June of 1997. They disagree on when they separated. It was either mid 2006 or early 2007, but in any event it was at least four and a half years ago. The parties also disagree about how long they cohabited together prior to their marriage, but they were together for at least nine-and-a-half years.
- [3] The parties have two daughters. I will refer to the eldest as V. She just turned 14. The younger daughter I will refer to as R., and she just turned 12 years of age.
- [4] The claimant wife is a self-employed home care aide. She has worked as a lab supervisor and in food inspection, and I will say more about her educational and work history later.
- [5] The respondent husband is presently an unemployed physician. He has worked previously as an emergency physician doing locums.
- [6] The orders sought relate to child support, not only ongoing but also retroactive to September 1, 2009, and also relating to extraordinary expenses for the children. The orders sought also relate to spousal support for the claimant wife, both ongoing and retroactive to September 1, 2009. The orders sought also relate to asset division and to the funds of about \$300,000 presently being held in trust, and the orders sought also relate to parenting. The respondent husband and father has not seen his daughters in over two years.
- [7] This matter proceeded to a hearing that occupied most of a day, on the basis of affidavits. The claimant wife was represented by her counsel, Ms. Elson. The respondent, Dr. B., appeared in person. Of course, it is always stressful to act personally in a matter such as this, but Dr. B. was articulate and made his points clearly. However, it appeared in his submissions that he had not responded to everything he would have liked to have responded to in the affidavits filed on behalf of Ms. C.

- [8] I will deal first with the questions of child support and spousal support. Child support requires a determination of income of the payor, in this case the father, and spousal support requires a determination of income of both parties. Both parties ask that I impute income to the other, not only on an ongoing basis, but also retroactive to September 1, 2009, being for the last two years. I will go in turn through the relevant financial circumstances of each party, particularly over the last two years.
- [9] With respect to Dr. B., Ms. C. says that the court should impute income of \$100,000 ongoing and inclusive of the last two years. Dr. B. says that nothing should be imputed to him in income for the last two years, and that on an ongoing basis, the court should set his income at \$50,000 to \$60,000.
- [10] As I have said, Dr. B. is a physician. For much of the time the parties were together, Ms. C. and the children lived in P1, and Dr. B. went to other places to act as a locum emergency physician. He spent a particularly large amount of his time doing that in P2.
- [11] His income, according to his tax returns, was as follows: in 2003, about \$99,000; in 2004, about \$67,000; in 2005, about \$78,000. Dr. B. has not produced tax returns for the years 2006 and later, but he did provide some information from the Ministry of Health regarding payments to his billing number. He explained that when he acted as a locum physician, he was ordinarily receiving 60 percent of the billings, with the doctor for whom he was acting as a locum receiving the other 40 percent, presumably for overhead and the like, and perhaps consideration of the value of the practice. Based on that information, Dr. B.'s earnings in 2007 were about \$79,000; in 2008, about \$63,000; and in 2009, about \$38,000.
- [12] Dr. B. has not worked since about May 2009 to date, and he explains this for a number of reasons. I am going to go through it chronologically. In early May 2009, Dr. B. was charged with the assault of L.M.. Ms. M. is a woman that he was living with in P2, and he has had two children with Ms. M..
- [13] Dr. B. says that the assault charge arose when there was a dispute between him and Ms. M. He says the source of the dispute was a false test result which would suggest that one of the parties had acquired a sexually transmitted disease outside their relationship. Dr. B. says that the media exaggerated the charges and the events, including alleging that firearms were involved, and that he was not able to work while the criminal proceedings were underway.
- [14] On September 3, 2009, Dr. B. entered a plea of guilty to assault and was convicted. He was sentenced to a conditional discharge and nine months' probation.
- [15] On October 8, 2009, a son, who I will refer to as J., was born to Dr. B. and Ms. M. On January 7, 2010, the probation order was terminated. This was an early termination, and in part on the basis of submissions and evidence on behalf of Dr. B. that it would be better for him to have the probation order complete for him to return to work.

- [16] Dr. B. says that although the criminal matters were resolved, that he was not in a position to begin working for a number of reasons, primarily health reasons. He says that the son, J., had failed to thrive initially and was then found to have a tumour, which, following extensive medical appointments, was determined to be a benign vascular tumour.
- [17] Dr. B. says that he then had problems with his older child with Ms. M., who is a daughter. He says the daughter suffered a branchial cleft arch defect, which resulted in many medical appointments and investigations. He says there was a concern about whether it could be treated on an ongoing basis or whether surgery should be attempted, and that ultimately surgery was not attempted.
- [18] In March 2010, Dr. B. apparently moved away from both P2 and Ms. M., and moved to V.. In the summer of 2010, Dr. B. says his father was in hospital in V. with serious medical problems.
- [19] Dr. B. says that he suffered a temporary loss of function of both his hands, and he provided a doctor's letter stating that he had a temporary loss of function of both hands due to radial nerve palsy over the period December 2010 through April 2011. It was not in evidence, but in his submissions Dr. B. said that he continues to have some problems with his hands, such as weakness and fatigue. He suggests that this may make it more difficult for him to work full-time and more difficult for him to work as an emergency physician.
- [20] The evidence is that by July 7, 2011, Dr. B. had complied with the governing body's requirements to enable him to return to work as a physician. He said that he was required to complete continuing medical education requirements. He has not worked since that date. He says that is because of his efforts to prepare for this court hearing.
- [21] Dr. B. is presently unemployed. He says he plans to seek work in the Victoria area, either as a locum physician or as a walk-in clinic physician or both.
- [22] On an ongoing basis, it is likely that Dr. B. will find work. It is notorious that there is a shortage of family doctors in B.C. It is also likely that it will take Dr. B. some time to establish a regular flow of income, since he is not returning to the P2 area, in part because of the media reports about the criminal charge.
- [23] Dr. B. had problems over the last two years. During that time he had an obligation to support his family, including Ms. C. and V. and R. He has had serious problems. There was the criminal matter. He should not have assaulted Ms. M.. The work interruption until the probation order was lifted essentially resulted from the criminal proceedings.
- [24] I am prepared to impute income to Dr. B. for the period May 2009 to January 2010, and that is an eight-month period. I am not prepared to impute any income to Dr. B. for the balance of the period to September 1, 2011 and that is on the basis of his family health problems, the fact of the media involvement interrupting his ability to work in P2, his own health problems, and a reasonable time being required to re-establish an income.

- [25] On the basis of the income Dr. B. was earning at the time that there was the altercation giving rise to his commission of an assault, I will impute income at the rate of \$80,000 per year for those eight months of May 2009 to January 2010. I will not impute any income to Dr. B. for the period February 2010 to the end of August 2011. Commencing with the period September 1, 2011, I will impute his income at \$60,000 per annum.
- [26] I turn then to Ms. C. The income she has reported in her tax returns is as follows: in 2007, about \$2,300, and that consists of some business income less a rental loss; in 2008, about \$27,000, and that consists of some capital gains and support payments, less a rental loss; in 2009, about \$26,000, and that consists of about \$500 in net business income and, in addition, capital gains and support and RSP income, but less a rental loss.
- [27] Ms. C. now estimates that her net self-employment income would be \$6,000 per year. She achieved a bachelor of science in genetics in 1980 and a master of science in microbial genetics in 1983. For the period 1986 to 1990, she was a senior lab instructor, earning \$32,000 per year in Victoria working for UVic. In 1990 through 1995, she was a lab instructor at UVic earning varying figures between \$32,000 and \$48,000 per year. For about a year in the period 1995 through 1996, she worked as a food microbiologist for \$55,000 per year. For about a year in the period 1996 or 1997, she worked as a microbiologist part-time at the rate of \$20 per hour.
- [28] Ms. C. answered interrogatories dated February 3, 2009, saying she was not expecting to work within the following 12 months, but she was unsure of whether she would work in the following 24 months. She referred to her involvement with the children and handling rental properties.
- [29] Ms. C. says the court should assess her income to be \$6,000 per year. Dr. B. says the court should assess Ms. C.'s income as being \$45,000 to \$70,000, imputing income to her on the basis of her work history and educational qualifications.
- [30] I consider these factors:
- Ms. C.'s qualifications in genetics are dated now. It is almost 30 years ago that she got her bachelor of science and a little less that she got her master's degree. Sciences, and in particular genetics, are notorious for changing rapidly, and 30 years is a long time in that field. Her work as a microbiologist is also dated; it is about 14 years ago that she last did that work.
 - The children are now ages 12 and 14, as I have said, and it is likely that Ms. C. could work while the children are in school, and perhaps soon even when they are out of school, and she would also be able to retrain.
 - I have taken into account that the minimum wage in British Columbia is \$8.75 an hour. At 35 hours a week, it is \$306.25 a week, and for 50 weeks of work a year it is \$15,312.50.

- d) Ms. C. is doing some work in her own business. There may be advantages to that and there may be financial advantages, such as tax benefits.
- [31] In my view, it is appropriate to impute income to Ms. C., but at the rate of a service job such as a minimum-wage job, so I am prepared to impute \$15,000 per year as the income for Ms. C.
- [32] I am not prepared to impute that income at the beginning of the separation. Ms. C. had the care of the children and of the house, and needed time to deal with that. Because she was dealing with those things, I am also not prepared to impute income to her during the period that Dr. B. was not working. I will impute income to her at the rate of \$15,000 per year, starting September 1, 2011.
- [33] I will then go through my calculations. I ran some calculations using the DIVORCEmate software. I admit that it was the older version, which is usually within a few dollars of the newer version. I input \$80,000 per annum for the payor husband and no income for the recipient wife, with two children living with their mother, a nine-year relationship, with the recipient age 48 on separation and the youngest child age eight on separation. On that basis, my calculations resulted in child support of \$1,186 per month. Under the Spousal Support Advisory Guidelines, I obtained a spousal support range of \$1,813 to \$2,173 with the midpoint at about \$2,000.
- [34] For this eight-month period, May 2009 to January 2010, I am going to be ordering child support at \$1,186 per month, and spousal support at \$2,000 per month. For that eight-month period, there would be owing child support of \$9,488 and spousal support of \$16,000.
- [35] For the period February 2010 to the end of August 2011, as I have said, I am considering zero income for both parties. That would mean there would be no obligation on either party to pay the other child support or spousal support.
- [36] For the period commencing September 1, 2011, and on an ongoing basis, as I have said, I am imputing \$60,000 per annum to Dr. B. and \$15,000 per annum to Ms. C.
- [37] On my calculations, the child support payable by Dr. B. on that basis is \$907. On my calculations, the Spousal Support Advisory Guidelines range is \$805 to \$1,131 per month in spousal support, with the mid-point of the range, \$968.
- [38] I will make an order on this interim basis at the mid-point of the range. Child support of \$907 and spousal support of \$968 is a total of \$1,875.
- [39] I will be ordering that the arrears that I have just described for child support and spousal support, and the payments for September, October, and November 2011 should come from the funds in trust.
- [40] I will also be ordering each party to provide financial information regarding any job they secure or their efforts in seeking work to the other on a monthly basis.

- [41] I am making this order for ongoing spousal support and child support subject to review by either party on or after September 1, 2012, being about a year away. I will just say for the benefit of the parties, when the order is subject to review, that means that the court can consider the matter afresh and look at all the financial information available at that time to make the proper order.
- [42] I next turn to the claim for extraordinary expenses. Ms. C. is claiming about \$13,550 relating to orthodontic expenses. Her evidence is that both of the daughters need orthodontic work, and it is not cosmetic, it is more serious than that. The position of Dr. B. was that he would share equally in that expense, but he wants Ms. C. to contribute one-half of the payment that he made of about \$12,500 to Dr. W. for a custody and access report, often referred to as a s. 15 report.
- [43] I have been shown the correspondence between counsel about Dr. W.'s report. There is a letter dated October 24, 2007, from Heather Sadler Jenkins LLP to Fatt & Elson, and the letter is signed by Mr. Lindsay and is sent to the attention of Ms. Elson. Mr. Lindsay wrote about Dr. W.'s report that:
- It is our position that the cost of such report should be divided equally between the parties. However, Dr. B. is prepared to pay for the costs of such report up front on the basis that the ultimate cost of the report would be an issue to be decided in the present litigation at the appropriate time.
- [44] Ms. Elson's responding letter says:
- Ms. C. will agree to a s. 15 custody and access report proceeding on the terms you have suggested.
- And after skipping a sentence:
- Dr. B. will pay for the report, but will be at liberty to seek contribution from Ms. C. in the proceeding.
- [45] This correspondence reveals the agreement commonly made that the parties can argue later about contribution for the s. 15 report. In my view, the ultimate determination of payment for that report should occur when all of the financial issues are resolved, rather than on this interim basis. The question of whether Ms. C. should contribute anything to the report already prepared by Dr. W. should be left to trial.
- [46] In my view, V. and R. do need the orthodontic payments. That money should be released from the trust funds and paid for the orthodontic payments. This will be subject to a further order to determine how that should be allocated; whether that should be split equally or in some other way.
- [47] I turn next to the question of the assets. Dr. B. wants a determination of assets and wants half the monies in trust and half the receipts from rental properties paid out to each party now. The position of Ms. C. is that this matter must go to trial.

- [48] In the pleadings, each party made a claim for more than 50 percent of the assets, although, as I have said, Dr. B.'s position now is that he would be satisfied with 50 percent. Ms. C., however, wants to be able to argue that she should be entitled to more than 50 percent. She refers to having made a greater capital investment in the properties and having been a stay-at-home mother who was out of the workforce for many years, who therefore has a compensatory claim, and also, her needs to become self-sufficient. I note that there have been references to both parties using RRSPs and there is a need to deal with debts and accounting regarding the house.
- [49] I am not able, on the evidence that has been given to me today, to make a final determination of how to account for all of these matters. So this matter, the question of the division of assets, will have to be adjourned to the trial.
- [50] I then turn to the parenting issues. Briefly, there was a significant period of time that the girls were living at the matrimonial home in P1 with their mother and with their father when he was in town, but he was often working in P2. At the separation, whether it was the middle of 2006 or early 2007, the girls stayed with their mother.
- [51] In the summer of 2007, the girls went to P2 and stayed with their father. As well as their father, at that time the household included Ms. M.'s daughter from another relationship and the youngest daughter, being the daughter of Ms. M. and Dr. B.. As a result, there were four girls in that household.
- [52] V. and R. appeared to have a very good time that summer living with their father, Ms. M. and the two other girls, and they were not very cooperative in returning to their mother in P1 for school in the fall of 2007. There are various things that occurred in their acting out, such as the girls refusing to get into the car, and refusing to wear their seat belts. The older girl, V., protested by not attending school for a matter of months and doing things such as vandalizing the mother's computer.
- [53] The custody and access report was prepared by Dr. W. and it is dated July 16, 2008. It included interviews in late 2007 and early 2008. It is a very long report. I have read it all. It is 95 pages long. I am going to only read some brief passages for the purposes of today.
- [54] Under "Conclusion", Item (vi), Dr. W. wrote this:

When K.C. [and that is Ms. C.] went to pick up the girls at the end of August 2007 after they spent their summer with their father and L.M. [that is Ms. M.] in P2, neither of the girls wanted to return to P1 with her. K.C. provided an agreement that both she and J.B. [that is Dr. B.] had signed which indicated that the girls would return with her to P1 after their summer vacation with him. However, something seems to have happened over the course of the summer that made both girls extremely reluctant to return to P1 with their mother. It seems highly unlikely that both girls would have developed such an attitude had someone not intervened very strongly to try and influence their decision. Since the girls were with J.B. and L.M. all summer, they would appear to be the primary individuals who would have had the opportunity to exert such influence on the

girls.

[55] In Conclusion (xiii):

In a situation like this, the possibility of a parental alienation situation has to be considered. In this situation, there clearly appears to be a number of characteristics that would suggest that J.B. and possibly L.M. had been actively trying to alienate [V.] from her mother with a considerable amount of success. When [V.] was interviewed, she tended to see everything that her mother did and said as being negative while everything her father did and said was positive. [V.] found it difficult to identify things that would be positive if she continued living with her mother while she was able to identify many things that she thought would be positive if she were allowed to live with her father. [V.] seemed to have difficulty identifying the various aspects of care that her mother has provided for her over the years whether her father was absent or at home. However, she had nothing but praise for any involvement she has had with her father and saw those interactions and experiences as being exceptionally positive.

[56] I will pause here to say that Dr. B. essentially says the girls had a wonderful time with the summer holiday in P2, and there is nothing to suggest alienation rather than the girls having had a wonderful time. I will say that in all of the evidence, there is some suggestion that V. tends to see things in a very stark light, of either completely right or completely wrong, and so this may also have a lot to do with V.'s particular personality.

[57] I am going to read passages from Recommendations (i), (ii), and (iii), by Dr. W. He recommended that "both girls remain in the care of their mother K.C. at least until [V.] is twelve years old." He says, "At that time [V.] could state her wishes" and he also suggests that R. could do so when she turned the age of 12.

[58] In recommendation (ii), Dr. W. wrote that it was important that Dr. B. remain involved in both girls' lives, to the best of his ability.

[59] In recommendation (iii), Dr. W. recommended one month with each parent in the summer, with sharing of holidays essentially between the parents' households.

[60] The last time that Dr. B. saw V. and R. was March of 2009, being about two-and-a-half years ago. Over the period of May 2009 through January 2010, as I have already related, there were proceedings on the assault charge to which Dr. B. entered a plea of guilty and was sentenced with a conditional discharge and probation that was terminated early. In March 2010, Dr. B. moved away from P2 and Ms. M.

[61] Ms. C. has sworn an affidavit in which she sets out some matters that concern her about Dr. B.'s conduct to the children. Paragraph 37 of the fourth affidavit of Ms. C., which is date-stamped September 9, 2011, is as follows:

37. My concerns in relation to the Respondent's conduct towards the Children have increased significantly in the past several years as a result of the Respondent's continued negative actions in relation to the Children, and in particular:

- a. In June 2010, the Respondent attempted to negotiate visitation through the Children. In particular, he attempted to make arrangements to pick the Children up at a secret location on Shawnigan Lake Road in Shawnigan Lake, BC while the Children and I were on vacation. The Respondent told the Children to sneak away and meet him without my knowledge. I changed the details of my holiday plans with the Children when I learned of the Respondent's actions.
 - b. The Respondent told our daughter, [V.], on several occasions that he is going to commit suicide.
 - c. The Respondent's telephone contact with the Children is inappropriate. He regularly criticizes me and attempts to involve the Children in his dispute with me. Further, following his criminal charges in May 2009, the Respondent lied to the Children about the events that had occurred and specifically instructed them not to have any contact with their step sibling, [O.], age 15, their half sibling, [I.], age 6 or their step mother, Ms. M.
 - d. Between January 2010 and August 2011, the Respondent's telephone contact with the Children has included the following:
 - i. He tells the Children that he is going to commit suicide and may not be around much longer;
 - ii. He uses derogatory language in speaking about me;
 - iii. He repeatedly instructs [V.] to run away from home;
 - iv. He instructs [V.] to purchase a bus ticket to Vancouver where he will pick her up, including instructing her how to make herself look older and lie about her age to purchase the ticket;
 - v. He instructs [V.] to sabotage my vehicle;
 - vi. He attempts to arrange visitation with the Children directly;
 - vii. He involves [V.] in an internet game known as "Second Life" which he at times is playing while he speaks to [V.] on the phone. This game is intended for adults only and is a virtual life game;
 - viii. He tells the Children to come and see him or live with him as he may be leaving the country.
- [62] Dr. B. did not file any affidavit denying these allegations, although in his submissions he effectively denied them. For example, with respect to the allegation that he tried to arrange to pick up the children at a secret location in Shawnigan Lake when they would be there on vacation, Dr. B. said that idea was raised by one of the girls, but that he simply said he would try to work out access. He denies saying he is going to commit suicide, but says he might have said things like, "Life is short." He denies telling V. to purchase a bus ticket and lie about her age in order to get it.

- [63] Over the intervening couple of years, there have been discussions, primarily through counsel, about access. The position of the mother has been that there should be supervision, if the father has any access. The position of the father has been that there should be access that is not supervised, and the result has been there has not been, as I have said, any contact whatsoever.
- [64] It is my view that it is in the best interests of V. and R. to have contact with their father. It should not, however, be contact where their father burdens his daughters with adult problems. It should not be contact where the father pressures his daughters to effectively "vote for him" in terms of parent and where to live.
- [65] I have concluded that I will direct both parties to tell their daughters that they should not discuss with either parent where they want to live, but that, as I will say shortly, it will be arranged for the daughters to talk to Dr. W. about this subject, after they have had some contact with their father, and that that will probably occur in January.
- [66] Dr. B. is here in P1 today and so is his mother. He and his mother would both like to see V. and R. Ms. C.f would prefer to have a trained supervisor on any visits, but in all the circumstances was agreeable to a visit with Dr. B.'s mother acting as a supervisor. We had discussion about a schedule and ultimately there was a schedule proposed by Ms. C., which, in my view, is appropriate.
- [67] There are to be visits as follows: Today, Wednesday, September 21, from 8:00 p.m. to 9:30 p.m., and that visit is to occur at Esther's Hotel in the Prince George area, and Dr. B. is to have his mother present throughout the visit, and to stay at the hotel the whole time.
- [68] The next visit is to be Thursday, September 22, from 6:00 p.m. to 9:30 p.m., with Ms. C. to drop off and pick up the children at Esther's Hotel, unless the parties otherwise agree to a location. It will be acceptable for Dr. B. to go out with the girls, but throughout this visit his mother should be present.
- [69] The same will be true for Friday, September 23, from 6:00 p.m. to 9:30 p.m. The same pickup, the same ability to go out, and the same presence of his mother.
- [70] Finally, on Saturday, September 23, from 10:00 a.m. to 1:00 p.m., on the same basis.
- [71] Following that, the girls should continue to have a chance to see their father. I am going to say that it should be at least on two days in the month of October or November, at least four days in December or January, at least two days in January or February, and at least two days in March or April. I am going to leave it to the parties to try work out dates and locations.
- [72] If Dr. B. has a suitable home or has access to a suitable home, such as his mother's home, the girls should stay with him overnight, at least one night for each of the two days I have listed. This access is to be unsupervised, unless the parties agree or there is a further order. I will provide for liberty to apply.

- [73] On the basis of the evidence before me, I am prepared to make the father's contact with his daughters unsupervised. If, as a consequence of something that occurs following this weekend's set of visits, there is some further evidence, there may be the possibility of another application seeking supervision or indeed some other agreement.
- [74] The parties will have liberty to apply to the court if they cannot work out the details. They can seek a hearing before me by telephone. However, I will not seize myself. That is because there may be some delays or difficulties in setting up a telephone hearing before me.
- [75] I also make the direction that the parties are to retain Dr. W. to do a follow-up report, and that report should include interviewing V. and R., and include observing them in their father's home. Dr. W. should interview the girls in January 2012 or later, unless the parties agree to some other time period or there is a different subsequent court order. There will be a similar liberty to apply if there are difficulties; again, an application before me can be by telephone.
- [76] I next turn to the funds in court. I already said that Dr. B. wanted the funds paid out to the parties equally, and I concluded I could not decide all the issues necessary to deal with that. Ms. C. wants the money to stay in trust and to have everything resolved at once. Her position is that it may turn out that she is entitled to everything that is in trust, once everything is taken into account, and so she does not want any payments out to Dr. B.
- [77] On the basis of the evidence before me, it is very likely that Dr. B. will get on his financial feet very soon. If he is in receipt of some funds from the money in trust, it is likely he could repay it realistically soon. For example, if, as Ms. C.'s counsel suggested, Dr. B. were ordered to pay an amount for child and spousal support retroactive for the period before September 2009, it is likely that he will find himself in financial circumstances that he could do that.
- [78] Bearing in mind the long period of unemployment for Dr. B. and his new living arrangements, in my view it is appropriate to order a modest payment to both parties from the funds in court. I will order that each will receive \$5,000 from the funds in court. What I have in mind there is that these funds will provide a modest bridge until Dr. B. is entirely on his feet.
- [79] I am going to try to summarize these orders, and I am going to do it by going through the applications in the sequence set out in the notices of motion. I am turning first to the applications by Ms. C..
- [80] First, Dr. B. is to pay \$9,488 in retroactive child support for the period September 1, 2009, to August 31, 2011. That fund is to be paid from the funds in trust on the basis that it is from Dr. B.'s share.

- [81] On an ongoing basis, Dr. B. is to pay child support of \$1,186 per month. With respect to the payments for September, October, and November 2011, and that is three months totalling \$5,625, that payment is to be made from the funds in trust, again on the basis that it is coming from Dr. B.'s share. Starting December 1, 2011, Dr. B. is to pay the ongoing \$1,186 per month directly.
- [82] In addition, as I have said, each party is to provide financial information or information about their job-seeking efforts on a monthly basis. This order is an interim order and it is subject to review on or after September 1, 2012.
- [83] With respect to Item 2, I order the sum of \$13,551 be released from the funds in trust for the orthodontic payments for the girls. That is subject to determination in a further order or written agreement about how that is to be shared between the parties.
- [84] With respect to Item 3, Dr. B. is to pay \$16,000 in respect of retroactive spousal support for the period September 1, 2009, to August 31st, 2011. That is to be paid from the funds in trust on the basis that it is coming from Dr. B.'s share. Once again, the three months for September, October, and November 2011 are also to be paid from trust, so that is \$6,000 at the rate of \$2,000 per month. On an ongoing basis, Dr. B. is to pay \$2,000 a month directly, starting December 1, 2011, and it is similarly subject to review on or after September 1, 2012.
- [85] With respect to Item 4, Dr. B. is ordered to file an updated, completed financial statement, including the necessary tax returns, by October 20, 2011. I have given him about a month. In my view, that should be sufficient for him to complete that.
- [86] MS. ELSON: I'm sorry, My Lady, the date, October?
- [87] THE COURT: 20.
- [88] MS. ELSON: Thank you.
- [89] THE COURT: Of 2011.
- [90] Item 5 in Ms. C.'s notice of motion was regarding payment from trust, and I have dealt with that on the individual items.
- [91] Item 6 is regarding Dr. B. providing a list of documents. He should do so, and I will set the same date, October 20, 2011.
- [92] Item 7 is with respect to costs, and I will hear submissions on that shortly.
- [93] I turn then to Dr. B.'s applications: 1, 2, and 3, I have already dealt with in the earlier orders.

- [94] Item 4 is regarding access to the children. I have already given the dates and times for the next few days, to be supervised by Dr. B.'s mother. I have also explained a direction about what the parents are to tell the girls, that the girls should not be discussing their preferred residence with their parents, but the parents should tell the girls that they will have an opportunity to discuss their preferred residence with Dr. W., probably in January 2012. I also have dealt with the access dates after this weekend.
- [95] With respect to Item 5 of Dr. B.'s application, as I have said, that will be adjourned to trial.
- [96] With respect to Item 6 about monies in trust, as I have said, I am ordering that each party receive \$5,000 from the funds in trust, and that is subject to a final determination of who is entitled to what. A party might be required to pay that back effectively, but at this point they are entitled to that advance.
- [97] Paragraphs 7 and 9 are also regarding asset issues and I have adjourned that to trial.
- [98] Item 8 is regarding costs and again I will hear that shortly.
- [99] I am also going to direct the parties to schedule a trial date. That should be for a date after March 2012, in the hope that Dr. W.'s report will be available for that trial. I also will just say that the parties are at liberty to set a judicial case conference or a settlement conference to try to resolve the issues.
- [100] I want it to be clear to Dr. B. that setting a trial date, is not saying that the matter must proceed to trial; it is simply making a reservation, so that if things are not sorted out by that date, the trial can proceed. Often having a trial date focuses everyone's mind, so they get the issues resolved in a timely way, instead of having the lawsuit drag on.
- [101] I think I have dealt with everything except costs.
- [102] MS. ELSON: Right, and My Lady, if I could just -- just to clarify, My Lady, the -- in your summary, you didn't make note of what I took to be your order that the parties retain Dr. W. to do the follow-up report, and I didn't note you to say how that was going to be paid for.
- [103] THE COURT: Thank you, I must have missed that page somewhere. The payment should be from the funds in trust.
- [104] MS. ELSON: Right.
- [105] THE COURT: And that will again be subject to order at trial as to how much each party should contribute.
- [106] MS. ELSON: And because the money is in my trust account and there's not counsel on the other side, I just want to be clear in terms of your intention with respect to the payments for support. For example, for September, October, and November of this year, is it anticipated that I would hold those monies back and pay them on the 1st of the month, or would it be sufficient to -- the monies are in an interest-bearing account and we have to transfer them. I can do it in whatever way you direct. I just don't want to be seen to be

taking liberties.

[107] THE COURT: Well, I will hear if there is any concern about that. Dr. B., do you have a concern about how the money is released, whether it is released in a lump sum in advance for the three months?

[108] J.B.: Your Honour, I -- when I provided support to Ms. C. when I could afford it, I would write her a cheque monthly. It would make sense to me that amounts for support, spousal maintenance or child support, be made on a monthly basis. That's what I would probably say would be fair. That's how I provided support for the two-and-a-half years when I was able to afford it.

[109] If it's easier in an administrative way for her to write one single cheque as a lump sum for September, October, November, I'm not really going to take a position against or for that, but I say that essentially my response is I'm neutral on it.

[110] MS. ELSON: What I could do maybe as a middle ground, My Lady, is go ahead now and transfer the monies that are ordered with respect to the retroactive amount and the amount for the extraordinary expenses, and then on November 1st, I can transfer the amount for September, October, November, and then it does not look untoward.

[111] THE COURT: That sounds fine to me.

[112] MS. ELSON: Okay.

[113] THE COURT: Well, are you going to make any submissions about costs?

[SUBMISSIONS RE COSTS AT 4:22:43 TO 4:24:52]

[114] THE COURT: Well, the order I am going to make for costs is that each party bears their own costs. This is a case where there were cross-applications and divided success, and in my view that is the proper order, each party bears their own costs.

[115] I think I have dealt with everything.

[116] MS. ELSON: Very good. The final matter I might ask you to address, My Lady, is just with respect to the comments that Dr. B. made about the girls potentially missing activities to spend more time with him this week. I just want it to be very clear that my client's position is we are going from zero to 60 here, in terms of four days in a row of access, and she has offered to facilitate that and will do that, of course, but that Dr. B. needs to be mindful of the fact that there is now a court order about when the children will be in his care, and that it is not open to him to negotiate further access this week with the children.

[117] J.B.: May I answer to that, Your Honour?

[118] THE COURT: Yes.

- [119] J.B.: Yeah, I mean, certainly I'm overjoyed that I have the opportunity to see my daughters with -- and for them to see their grandmother. It's absolutely wonderful. In visitation tonight, it will take place at the Esther's Inn hotel. There's a recreation facility there that has a swimming pool and whatnot, and if the girls want to, they can use that, so that we can use the swimming pool. And if Ms. C. would be kind enough to let the girls be provided with swimsuits, that would be very helpful. Certainly in the next day following, I probably would be wanting to let them have a visit with their aunts and uncles in town here, and be able to have a bit of a reuniting of our family. That --
- [120] THE COURT: I think all Ms. Elson is saying is the times that I have given are final, not negotiable with the girls, so --
- [121] J.B.: Oh yes, yes, absolutely, this -- that's fine, I have no -- no difference with that at all.
- [122] MS. ELSON: And I will just confirm, My Lady, you did indicate the pickups and drop-offs, but that was my client's intention, she will be at the lobby of the hotel to drop them off and to pick them up at the designated time.
- [123] J.B.: Will that be for all three -- three or four days?
- [124] MS. ELSON: For all four visits, yes.
- [125] J.B.: Okay, that's fair enough.
- [126] MS. ELSON: Very good, thank you, My Lady.
- [127] THE COURT: All right. I hope that goes well, and I will return this chambers brief then. Thank you.

"Gray J. edited for privacy"

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