

CANADA / JUDGMENT

K.D.P.P. v. G.P.P.

2025 BCSC 1796

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1796 K.D.P.P. v. G.P.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.D.P.P. v. G.P.P.,

2025 BCSC 1796

Date: 20250915

Docket: E221108

Registry: Vancouver

Between:

K.D.P.P.

Claimant

And

G.P.P.

Respondent

Before: The Honourable Justice Basran

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

May 5-9, 12-15, 2025

Place and Date of Judgment:

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September 15, 2025

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Introduction

- [1] The claimant, K.D.P.P., and the respondent, G.P.P., met online in 2006, moved in together in August 2007, and married in December 2008. Their daughter, E.P., was born in June 2009. She is now 16 years old.
- [2] The parties agree to equal parenting time with E.P. on a two-week rotation based on 3/2/2/3/2/2 days. The Court accepts that this is an acceptable parenting schedule.
- [3] While both parties seek a divorce, they dispute their date of separation. The claimant asserts that they separated on January 1, 2012. The respondent maintains that they separated ten years later, on December 31, 2021. In addition to the date of separation, the parties dispute how their assets should be divided.
- [4] The issues to be decided in this case are the parties' credibility, separation date, extent of excluded property, division of family property and debt, imputation of income, parental decision making, child support, special and extraordinary expenses, and spousal support.

Credibility

Legal Principles

- [5] The evidence provided by the parties assists the court's determinations of the issues in this matter. It is therefore necessary to consider the parties' credibility, and useful to set out the principles governing the determination of credibility.
- [6] In assessing the truthfulness of the parties' testimony, I am guided by the test set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.) at 357:

[] In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.
- [7] In assessing credibility, I will apply the factors described by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, *aff'd* 2012 BCCA 296:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems

unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (Wallace v. Davis, [1926] 31 O.W.N. 202 (Ont. H.C.); [[Faryna] v. Chorny, [1952] 2 D.L.R. [354] (B.C.C.A.)] [Faryna]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time ([Faryna] at para. 356).

Positions of the Parties

- [8] The claimant submits that the respondent's evidence was inconsistent and vague. She points to the respondent's shifting evidence regarding their sexual relations from 2012 to 2022 as an example of his inconsistent testimony. Conversely, she asserts that she testified in a forthright, precise, and coherent manner and that her evidence should be considered credible and reliable.
- [9] The respondent counters that he was a credible and reliable witness and that the claimant's evidence should be approached with caution. Among other things, he drew the Court's attention to the fact that while the claimant asserts that their marriage ended in 2012, the parties were still listed as married in 2019 for the purposes of their Medical Services Plan. Her income tax filings also listed her as married until 2020.

Discussion

- [10] Where their evidence conflicts, I prefer the evidence provided by the claimant over that of the respondent. This is because I found her testimony to be consistent, sincere, and rational. She made reasonable admissions, and her evidence was unshaken on cross-examination.
- [11] On the issue involving the Medical Services Plan, the claimant admitted that she purported to be married to the respondent in 2019 "on paper" in order to save money. When counsel suggested that admitting to this amounted to an admission of fraud, she sarcastically responded "sure, yes". I do not take this as an admission of actual fraud. I find that the claimant's comment was merely a straightforward acknowledgment that, given the parties' difficult financial circumstances, as described later in these reasons, she was seeking to save money.
- [12] I also reject the assertion that the claimant deliberately misstated her marital status as "married" on her income tax returns. Aside from 2015 and 2016, the respondent prepared the claimant's income tax returns. In 2015 and 2016, a work associate completed her returns. I accept the claimant's evidence that she relied on these individuals to fill out the details of her income tax returns and that she only checked them to determine if she would receive a refund. Additionally, at this time, the parties were still married and living together and could therefore identify themselves as such.

- [13] The respondent's evidence was scattered, inconsistent, and occasionally contradictory. For example, he asserted that the basement suite in the family residence was not rented because it was under the master bedroom and the claimant did not want tenants living immediately below their bedroom. However, the evidence demonstrates that the claimant slept on a sofa in the living room, not in the master bedroom, from 2012 to 2022. The respondent later changed his evidence and claimed that the basement suite was not rented because the claimant would not approve tenants.
- [14] The respondent also claimed that the claimant received an inheritance of \$300,000 and that she considered using these funds to build a laneway house on the family property. The claimant denied this assertion, and this claim is not supported by any documentary evidence. I find that it is nothing more than a bald assertion.
- [15] The respondent's evidence of the parties' sexual relations was also vague and inconsistent. Initially, he testified that they maintained intimate relations from 2012 to 2022, but he provided no details on timing or frequency. There is no dispute between the parties that the claimant slept on a sofa in the living room for these ten years.
- [16] On cross-examination, he admitted that sexual relations between them was unusual. He also testified that they renewed having intimate relations in both August 2017 and August 2018 but admitted subsequently that they reconciled and had sexual relations during only one period, from August to October 2018. I find that the respondent's acknowledgement that the parties "reconciled" for two months in 2018 supports the claimant's assertion that, prior to this brief reconciliation, the parties were separated.
- [17] The respondent also initially denied knowing that the claimant collapsed her Registered Retirement Savings Plan ("RRSP") and used the funds for household expenses. This was yet another mistruth advanced by the respondent. When it was pointed out to him that he prepared the claimant's income tax return for the year in question and therefore had been aware of the status of her RRSP, he admitted that he knew she had collapsed her RRSP. The parties' financial circumstances were difficult after the respondent was laid off by his employer, a medical imaging company, in May 2017. Based on the evidence, I accept that the claimant used her RRSP funds to fund household expenses, and that the respondent had knowledge of this fact.
- [18] In conclusion, the overall tenor of the claimant's evidence was detailed, candid, consistent, and coherent while the respondent's evidence was vague, halting, occasionally contradictory, and often self-serving. On factual matters where the parties' evidence conflicts, I prefer the evidence of the claimant to that of the respondent.

Separation Date

Legal Principles

- [19] When the date of separation is in issue, the court focuses its analysis on the generally accepted characteristics of marriage, including whether the parties intended to remain married, had sexual relations, attended family events and public activities together, and shared financial resources: *Der Woon v. Zadorozny*, 2020 BCCA 95 at para. 9.
- [20] Sexual relations, or the lack thereof, is not determinative in the court's analysis: *Der Woon* at para. 9.
- [21] A checklist approach is not appropriate for determining the parties' separation date. Instead, the court should look for indicators of behaviours that society associates with marital relationships: *Der Woon* at para. 10.
- [22] Spouses can be living separate and apart while living in the same residence. The determination of whether the parties are separated involves a consideration of all relevant factors, including the parties' sleeping arrangements and the reasons for staying in the same residence: *Azanchi v. Mobrhan-Shafiee*, 2019 BCSC 1392 [*Azanchi BCSC*] at para. 80, rev'd on other grounds 2021 BCCA 5, citing *Al-Sajee v. Tawfic*, 2019 ONSC 3857 at para 26.

Positions of the Parties

- [23] The claimant asserts that the separation date is January 1, 2012. Based on the evidence adduced at trial, this assertion is not advanced for any particular purpose or outcome, but merely because, in her view, it is the truth.
- [24] The respondent submits that the separation date is December 31, 2021. This date is untethered from any particular event or asserted fact. It is based on the respondent's assertion that the parties intended to remain married until then, as evidenced by the fact that the parties attended activities in public as a family and attended a range of family events together up until this point. He further asserts that there is no clear statement advanced by either of the parties until they physically separated which indicates a desire to terminate their relationship.

Relevant Facts

- [25] The parties moved in together in August 2007. At this time, the claimant moved into a single detached home on the West Side of Vancouver (the "Family Residence"). The respondent owned the Family Residence prior to the claimant moving in and it remained solely in his name until it was sold in 2022.
- [26] From July 2007 until E.P. was born in 2009, the claimant worked 35 to 40 hours per week at a medical imaging facility. She earned approximately \$18 per hour.
- [27] After E.P. was born, the claimant became a stay-at-home mother.

- [28] In 2011, the claimant decided to upgrade her skills by pursuing further educational studies. Commencing in January 2012, she began an online degree program in Justice Studies at Royal Roads University.
- [29] The respondent was vehemently opposed to the claimant taking these courses. He wanted her to remain a full-time stay-at-home parent until, at the earliest, E.P. started kindergarten. He suggested that if the claimant wanted to do something outside of the home, she could get a job that did not require additional education.
- [30] The claimant generally arranged for third-party childcare during the in-person portions of her program, however, occasionally, the respondent was required to care for E.P. He was irate that he had to take some time off work to care for E.P., because he preferred to use his vacation time in the summer to go boating.
- [31] The claimant's decision to pursue further studies ruptured the parties' relationship. On January 1, 2012, the claimant began sleeping on the sofa in the living room and proceeded to sleep on the sofa until 2022, when the claimant moved out of, and the respondent sold, the Family Residence.
- [32] The only break from this sleeping arrangement was a one-month period during which the claimant lived in the basement suite of the Family Residence. The claimant testified that the basement unit had spiders, mould, and exacerbated E.P.'s allergies. For these reasons, the claimant returned to sleeping in the living room.
- [33] The original notice of family claim, filed May 6, 2022 by the claimant, listed the separation date as December 31, 2021. The claimant says that her lawyer filled out this form and that the date was an error. Subsequently, the claimant filed an amended notice of family claim on July 26, 2023, which listed a separation date in January 2012.
- [34] Based on the evidence before me, I accept that the parties' relationship ended in January 2012, shortly after the claimant began her degree studies.
- [35] Notwithstanding the end of their relationship, the claimant remained in the Family Residence from 2012 until 2022 because she could not afford the cost of adequate rental accommodations for her and E.P.
- [36] In 2017, the claimant signed a travel authorization for E.P.'s travel with her father. In this document, the claimant referred to the respondent as her husband. The respondent argues that this is indicative that the parties remained together.
- [37] The respondent also testified that, during the summer of 2018, they "presented as a happy family" and tried to "patch things up". During this brief two-month reconciliation (from August to October 2018), the parties had sexual relations at least twice. The claimant described one of these events as a "drunken hook up".

- [38] The respondent deposited his paycheques into a joint account with the claimant. After the respondent lost his job in May 2017, his severance pay was deposited into this joint account.
- [39] After the respondent lost his job, the claimant implored him to sell the Family Residence so they could each move forward with their lives, separately. He refused. As will be described in more detail later in these reasons, the respondent has not worked consistently since he lost his job in 2017.
- [40] In 2019, the respondent put a second mortgage on the Family Residence without advising the claimant. When the claimant asked how he was contributing to the family's expenses while being unemployed, he replied that he was getting the money from investments and did not disclose that he had incurred substantial debt, secured by the Family Residence.
- [41] In 2021, the parties signed a Pharmacare registration form indicating that they were married. The parties were on each other's benefits plans until 2021. The parties and E.P. also remained on the respondent's Medical Services Plan until 2022.
- [42] The parties and E.P. celebrated birthdays, attended some family events, and occasionally travelled together. Until 2021, the parties attended E.P.'s piano recitals and sat together. In 2021, they began sitting separately.
- [43] In 2022, the claimant's parents gave her \$30,000 from the sale of their business. These funds provided the claimant with the ability to leave the Family Residence and rent a nearby residence. As noted, the claimant filed her notice of family Claim on May 6, 2022. She left the Family Residence in September 2022.
- [44] In late 2022, the respondent sold the Family Residence.

Discussion

- [45] I am satisfied that the parties separated on January 1, 2012. I accept the claimant's evidence that the respondent was incensed by her decision to pursue further studies and ceased treating her like a spouse as of that date. I further accept the uncontradicted evidence that the claimant slept on a sofa in the living room for ten years due to the cessation of the parties' marital relationship.
- [46] The respondent was the primary income earner from the date the parties moved in together in August 2007 until he lost his job in 2017. He has not returned to work since then and the parties have lived on the claimant's income, RRSPs, and an ever-increasing amount of debt, secured by the Family Residence.

- [47] The parties' financial dealings support my finding that the parties separated in 2012. The respondent's unilateral decision to refinance the Family Residence in 2019 is inconsistent with joint decision making on issues that significantly affect the parties' finances. Additionally, while I accept that the parties shared a joint bank account and used it for household expenses, the evidence suggests that the parties were not dealing with the family's finances in a joint, open, and forthright manner.
- [48] For example, the respondent's mistruth that he paid household expenses from investment income, as opposed to his reliance on undisclosed debt, indicates that the parties had some separate finances.
- [49] I acknowledge that the parties referred to themselves as being married in their benefit plans and Pharmacare registrations. I accept the claimant's evidence that this was done to minimize their medical expenses, in light of their precarious financial situation. Legally, the parties were still married at the time and could identify themselves as such. The opportunity to save on necessary expenses is a reasonable explanation for why these forms were filled out in this manner. The forms, however, are not indicative of the reality of the parties' day-to-day relationship.
- [50] Similarly, the 2017 travel authorization in which the claimant referred to the respondent as her husband does not shake my finding that they separated in 2012. Legally, this was an accurate description of their relationship and describing the respondent in this way may have facilitated E.P.'s ability to travel with her father.
- [51] While the parties' sexual relationship is not a significant factor in my assessment of the separation date, I accept the claimant's evidence that they briefly reconciled for two months in 2018 (from August to October 2018) but did not otherwise engage in sexual relations after 2012.
- [52] Lastly, photographs were adduced into evidence which depict the parties and E.P. doing common family activities. In my view, these photos demonstrate the parties' efforts to maintain some sense of normalcy for E.P. but they do not alter the fact that the parties were separated.
- [53] I am convinced that, for financial reasons, the parties continued to cohabitate, and, for E.P.'s sake, sought to maintain a civil and reasonably normal outward relationship with their friends and family. While the parties' actions suggest devotion to their daughter, I do not accept that these photographs, or any of the other evidence before the Court, provides cogent evidence that the parties remained in a marriage-like relationship after 2012.
- [54] I therefore find that the parties separated on January 1, 2012.

Family Property, Family Debt, and Excluded Property

Legal Principles

[55] Section 84 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides:

84 (1) Subject to section 85 [excluded property], family property is all real property and personal property as follows:

- (a) on the date the spouses separate,
 - (i) property that is owned by at least one spouse, or
 - (ii) a beneficial interest of at least one spouse in property;
- (b) after separation,
 - (i) property acquired by at least one spouse if the property is derived from property referred to in paragraph (a) (i) or from a beneficial interest referred to in paragraph (a) (ii), or from the disposition of either [.]

[56] Excluded property includes, but is not limited to, property acquired by a spouse before the relationship between the spouses began, and property acquired via an inheritance: FLA, s. 85.

[57] The party claiming excluded property bears the onus of establishing and tracing excluded property. A claim for excluded property cannot succeed where the excluded property cannot be traced to any remaining assets and a party cannot look to other family property to make up the difference where the excluded property is lost or dissipated: *Asselin v. Roy*, 2013 BCSC 1681 at para. 222.

[58] Family debt is debt that was incurred during the course of the relationship or post-separation for the purpose of maintaining family property: FLA, s. 86.

[59] Married parties are presumptively entitled to an equal division of family property and are equally responsible for family debt, regardless of their respective use or contribution: FLA, s. 81.

[60] There is a strong presumption in favour of equal division of family property. As contemplated by s. 95(1) of the FLA, the court may order an unequal division of family property only where the general rule of equal division would be "significantly unfair". The concept of "significant unfairness" contemplates unfairness that is extensive, weighty, meaningful, or compelling. *K.L.T. v. F.M.*, 2021 BCSC 1688 at para. 48.

[61] In assessing whether equal division would be significantly unfair, I am guided by s. 95 of the FLA, which provides:

- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
 - (a) the duration of the relationship between the spouses;

- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [setting aside agreements respecting property division];
 - (c) a spouse's contribution to the career or career potential of the other spouse;
 - (d) whether family debt was incurred in the normal course of the relationship between the spouses;
 - (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
 - (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
 - (g) the fact that a spouse, other than a spouse acting in good faith,
 - (i) substantially reduced the value of family property, or
 - (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
 - (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
 - (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- (3) The Supreme Court may consider also the extent to which the financial means and earning capacity of a spouse have been affected by the responsibilities and other circumstances of the relationship between the spouses if, on making a determination respecting spousal support, the objectives of spousal support under section 161 [objectives of spousal support] have not been met.

Positions of the Parties

- [62] The claimant asserts that because the parties separated in 2012, they were separated when the respondent took out the second mortgage on the Family Residence. She asserts that by taking on the second mortgage after the parties separated, the respondent withdrew an amount roughly equivalent to the value of his proven excluded property. Therefore, the claimant argues that the equity which remains in the Family Residence is family property which should be divided equally.
- [63] Specifically, the Family Residence was sold in 2022. The net sale proceeds were \$1,188,283. After accounting for rent, damage deposit, and the parties' interim distribution, the claimant seeks a total of \$402,265 from the net sale proceeds. This would result in a distribution of \$486,018 for the respondent.

- [64] The claimant concedes that the respondent is entitled to keep his sailboat, vehicle, and funds in his account with Royal Bank of Canada ("RBC") as of December 31, 2021, without any compensation to her. Similarly, she asserts that she is entitled to keep her vehicle, the funds held in her bank accounts, and the funds in her RRSP which have accumulated since the date of separation.
- [65] The respondent submits that since he purchased the Family Residence prior to the commencement of the parties' relationship, a portion of the sales proceeds from the Family Residence should be considered his excluded property. He submits that this excluded property should be calculated based on his net equity in the Family Residence, which, as of August 1, 2007, was \$784,269. He also requests that the 1986 Baltic Sailboat be considered excluded property.
- [66] In relation to debt, the respondent contends that he obtained the second mortgage so that E.P. would remain in the same residence until she completed elementary school. He further asserts that the claimant either knew that he was incurring significant debt, or ought to have known, because the respondent was not working and the claimant knew that the bills were not being paid from the parties' joint account.
- [67] Accordingly, the respondent argues that all of the debt incurred from the commencement of their relationship until December 31, 2021, including the second mortgage, should be considered family debt because these funds were used to pay family expenses.
- [68] After excluding the respondent's net equity in the home, the debt, and the parties' interim distribution, the respondent asserts that only \$104,014 from the sale of the Family Residence should be declared family property and evenly divided.
- [69] The respondent also seeks that the funds in the claimant's RBC account and her RRSP be divided equally.

Relevant Facts

- [70] A historical appraisal report prepared by an expert appraiser indicates that the value of the Family Residence on August 1, 2007 was \$1,225,000.
- [71] The outstanding mortgage on the Family Residence as of December 31, 2007 was \$440,731.
- [72] The respondent purported to have received \$48,255 from his father's estate in 2013 but did not provide any documents to substantiate this claim.
- [73] The respondent purchased a 1984 Aloha Sailboat in 1999 and sold it in 2017 for \$20,000. On April 25, 2017, he used these funds, along with the purported inheritance, to purchase a 1986 Baltic Sailboat for \$60,000 USD, which is approximately \$76,458 CAD. The respondent paid a further \$40,000 CAD to move this boat from Connecticut to Vancouver.

- [74] In a sworn March 21, 2025 Form F8 Financial Statement, the respondent estimated the current value of the 1986 Baltic Sailboat is \$60,000 CAD.
- [75] Throughout the time the parties lived together, the respondent spent between \$10,000 and \$12,000 per year to moor and maintain this boat.
- [76] In 2019, the respondent bought a \$38,000 BMW for his use.
- [77] During the time they lived together in the Family Residence, both parties used the money in their pre-relationship and pre-separation RRSP to pay for their expenses and those of E.P.
- [78] During the entire time the parties lived together, the respondent paid \$2,000 per month towards the mortgage on the Family Residence.
- [79] Prior to E.P.'s birth, the claimant contributed \$800 per month towards the mortgage on the Family Residence. She did not contribute towards the mortgage following E.P.'s birth.
- [80] I accept the claimant's evidence that between 2012 to 2022, she repeatedly asked the respondent to sell the Family Residence so the parties could go their separate ways. The respondent refused and told her she would get nothing if she filed for divorce.
- [81] In June 2010, the respondent obtained a line of credit, secured by the Family Residence. Subsequently, in 2015, the respondent unilaterally took out a larger line of credit in 2015 (together, the "line of credit").
- [82] In 2017, the last year in which the respondent was employed, he earned employment income and severance payments totalling \$163,681. He was laid off in May 2017 and received 13 months of severance payments. The respondent made no effort to find a new job during the 13-month severance period and has made minimal efforts since then. He declined to make use of the job search services provided by his former employer.
- [83] In light of the respondent's unemployment, the claimant increased her working hours to 30 hours per week.
- [84] In 2019, the respondent took out a \$640,000 second mortgage, secured by the Family Residence, without informing the claimant. The mortgage had an interest rate of 8.49%, compounded monthly.
- [85] As noted, the respondent did not consult or seek approval from the claimant prior to obtaining the line of credit or the 2019 second mortgage. I will refer to the line of credit and the second mortgage, collectively, as the "Post-Separation Debt". The total Post-Separation Debt is valued at \$885,924.

- [86] The respondent admitted that after he was laid off in May 2017, the claimant paid for some of the family's expenses with her employment income. He paid some of their expenses from the Post-Separation Debt. The respondent confirmed that he did not tell the claimant that he was using the equity in the Family Residence to pay some of the family's expenses. He further verified that not all of the family's expenses were paid through the joint account held by the parties.
- [87] I accept the claimant's evidence that the respondent told her he was paying some of the family expenses with income generated by his investments.
- [88] When the respondent sold the Family Residence in 2022, the amounts owing on the Post-Separation Debt were \$243,365 (line of credit) and \$642,559 (second mortgage), respectively. The respondent admits that he was forced to sell the Family Residence because he could no longer afford the payments on the Post-Separation Debt.
- [89] The net sale proceeds from the Family Residence are \$1,188,283. This money is held in trust by counsel for the respondent. From this amount, each of the parties has already received an interim distribution of \$150,000.

Discussion

Family Debt

- [90] Beginning with the issue of debt, I am not prepared to treat the Post-Separation Debt, which was solely and secretly incurred by the respondent, as family debt. I previously determined that the date of separation was January 1, 2012. The Post-Separation debt was largely incurred after the parties separated. I also accept that before the debt was incurred, the claimant implored the respondent to sell the Family Residence. He refused to do so.
- [91] Selling the Family Residence would have provided the parties with sufficient funds to start living their lives separately. Instead, by his own admission, the respondent unilaterally took out a larger line of credit in 2015 and a second mortgage in 2019.
- [92] By 2019, the respondent had not worked for approximately two years and was making very little effort to find employment. Even if the claimant paid some rent, the respondent had no income, or plan to earn income, nor did he have a plan to make the monthly payments on the Post-Separation Debt.
- [93] It is reasonable to assume the respondent understood by taking on the Post-Separation Debt secured against the Family Residence, that if he did not find employment, he would eventually have to sell the Family Residence to pay the debt.
- [94] The respondent claimed that he incurred the Post-Separation Debt so that E.P. would remain in the same elementary school. I find that this is an after-the-fact justification for the respondent's actions.

- [95] The respondent did not discuss remaining in the Family Residence, for E.P.'s benefit, with the claimant. The evidence also suggests that while he used the Post-Separation Debt to fund some of the household expenses, he also used the money to purchase and maintain a sailboat and a BMW vehicle, solely for his use.
- [96] Applying the relevant factors from s. 95(2) of the FLA, I find that the respondent's unilateral decision to obtain the Post-Separation Debt was:
- 1) Not incurred in the normal course of the relationship between the parties: s. 95(2)(d);
 - 2) So substantial that neither party had the ability to service it: s. 95(2)(e);
 - 3) Instrumental in causing a significant decrease in the value of the family residence well beyond market trends: s. 95(2)(f); and
 - 4) Not incurred in good faith. The respondent acted in bad faith by taking on debt, without consulting the claimant, that substantially reduced the value of the Family Residence and her equity in it: s. 95(2)(g).
- [97] I recognize that there is a strong presumption in favour of equally dividing family debt. However, in my view, the consequences which flow from the respondent's refusal to sell the Family Residence and his decision to incur substantial Post-Separation Debt are his responsibility.
- [98] Considering the facts before me, and s. 95 of the FLA, I find that it would be significantly unfair to treat all of the Post-Separation Debt as family debt or to order the equal division of the Post-Separation Debt.
- [99] This finding is subject to the caveat that a portion of the Post-Separation Debt was likely used to pay some of the household expenses. There is scant evidence on this issue. The claimant submits that all of this debt was used by the respondent for either his boating and personal expenses or to service the interest payments on the underlying debt. Conversely, the respondent contends that all of the Post-Separation Debt was used to pay household expenses.
- [100] I find that the evidence suggests that approximately \$1,500 per month of the Post-Separation Debt was used by the respondent to pay household expenses. This amount does not include the interest payments on the Post-Separation Debt which are entirely the respondent's responsibility.
- [101] I have reached this amount by considering the difference between the parties' overall expenses and the claimant's income. The evidence suggests that virtually all of the claimant's income was used for household expenses and E.P.'s expenses. The evidence also suggests that both parties used their RRSPs to fund household expenses.

- [102] The respondent first obtained a line of credit in June 2010 and withdrew funds from it. Based on the evidence before me and my consideration of what is reasonable in the circumstances, I find that from the day the 2010 line of credit was opened, until September 2022, he used \$1,500 per month of the Post-Separation debt for family expenses. This amount totals \$222,000. This portion of the Post-Separation Debt is, therefore, family debt and each of the parties is equally responsible for it.
- [103] The total Post-Separation Debt is valued at \$885,924. Deducting the aforementioned family debt of \$222,000 results in a net Post-Separation Debt of \$663,924 (the "Net Post-Separation Debt"). This is the amount that the respondent dissipated by failing to sell the Family Residence earlier while concurrently taking on expensive and unmanageable debt in the form of a line of credit and second mortgage. As previously described, the respondent is solely responsible for this debt so it will be added to the net sale proceeds of the Family Residence for the purpose of calculating the adjusted equity in the Family Residence.

Family Assets

- [104] Turning next to the division of the parties' assets. I find that \$784,269 from the sale proceeds of the Family Residence is the respondent's excluded property. This is based on the appraised value of the Family Residence as of August 1, 2007, less the mortgage held on the property at the time.
- [105] I am also satisfied that the respondent is entitled to an exclusion of \$20,000 in respect of the sailboat he purchased in 1999 and sold in 2017. He used the funds from the sale of that sailboat to purchase the Baltic Sailboat in 2017, which he currently valued at \$60,000. I accept this estimated value.
- [106] Deducting the respondent's exclusion of \$20,000 from the current Baltic sailboat value of \$60,000 yields \$40,000. Accordingly, the net sailboat value of \$40,000 is a family asset that shall be divided equally. The respondent shall keep the Baltic sailboat and make a compensation payment of \$20,000 to the claimant, payable from his share of the proceeds from the division of the Family Residence.
- [107] The respondent is not entitled to an exclusion for the alleged inheritance he received from his father's estate because he did not adduce any documentary or other independent evidence to prove the existence of such an inheritance. Based on my finding that the respondent's evidence is not credible, I am not prepared to accept his testimony on this issue absent some form of corroboration. Accordingly, I find that the respondent has not discharged the onus of establishing his claim for excluded property in respect of this purported inheritance.

- [108] Turning to the claimant's assets. After returning to work in 2014, the claimant contributed amounts to a Registered Education Savings Plan for E.P., her own RRSP, and to a personal savings account. She saved these funds from her post-separation earnings. They are, therefore, not family assets and are not divisible.
- [109] I also find that during the 97-month period from October 2014 (when she returned to work) to October 2022 (when the respondent sold the Family Residence), the claimant should have used some of her employment income to pay rent, as she similarly did prior to E.P.'s birth by contributing towards the monthly mortgage payment.
- [110] I am satisfied that a reasonable amount of rent payable to the respondent would have been \$1,000 per month over this 97-month period, for a total of \$97,000. This is based on the claimant's employment income and the respondent's evidence that throughout the time the parties lived together, he paid \$2,000 per month towards the first mortgage on the Family Residence. Accordingly, the amount of \$97,000 should be subtracted from the claimant's portion of the equity in the Family Residence.
- [111] The net sale proceeds of the Family Residence were \$1,188,283. The amount of the Net Post-Secondary Debt, as noted, is \$663,924, and it should be added to the net sale proceeds of the Family Residence, which equals to \$1,852,207, to determine the adjusted equity in the family residence.
- [112] From this total of \$1,852,207, the respondent is entitled to retain \$784,269 as excluded property, based on his net equity in the Family Residence as of August 1, 2007. Accordingly, the net family property/assets to be divided is \$1,067,938 (\$1,852,207 - \$784,269). Half of this amount is \$533,969. Each party is entitled to this amount as their net family property/assets.
- [113] From the claimant's share of the net family property/assets, \$97,000, representing the 97 months at \$1,000 per month of unpaid rent will be deducted, which equals \$436,969 (\$533,969 - \$97,000).
- [114] The respondent's share of the net family property/assets includes his excluded property of \$784,269 and his share of the net family property/assets of \$533,969. From this amount, \$663,924, the Net Post-Separation Debt is excluded debt, and will be subtracted, and \$97,000 is added in respect of the 97 months of unpaid rent by the claimant (\$784,269 + \$533,969 - \$663,924 + \$97,000 = \$751,314).
- [115] A further \$150,000 will be deducted from each party to account for the interim distribution. The remaining net sale proceeds of the Family Residence are \$888,283 (\$1,188,283 - \$150,000 - \$150,000).
- [116] From these net sale proceeds of \$888,283, the claimant is entitled to \$286,969 (\$436,969 - \$150,000) and the respondent is entitled to \$601,314 (\$751,314 - \$150,000), subject to further deductions for retroactive child support, lump sum spousal support, security for future child support, and security for costs, discussed later in these reasons for judgment.

The Trust

- [117] The respondent's uncle settled a trust which listed E.P. as the beneficiary and the respondent as the trustee (the "E.P.'s trust"). The assets in the trust consist of ½ kilo of gold and 35 one-ounce gold coins. The trust is valued between \$236,000 and \$500,000. The respondent threatened to appoint his mother as the trustee if the claimant disclosed the trust's existence to either her lawyer or the court. By the time of trial, the respondent had appointed his mother to be trustee.
- [118] The claimant asserts that the existence of this trust may impact the calculation of the parties' respective child support obligations pursuant to s. 3(1) or 3(2)(b) of the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [119] Accordingly, the claimant seeks an order that, at the request of either party, the trustee of E.P.'s trust must provide updated financial disclosure. The claimant also seeks an order that empowers E.P. to disapprove of any trust disbursements.
- [120] The claimant seeks an order that both parties have the right, on behalf of E.P., to make inquiries of the respondent's mother (the current trustee of the E.P.'s trust) to determine the amount and status of the trust funds held for the benefit of E.P., and to be consulted by the trustee before any use is made of the money.
- [121] The wording of the claimant's request is similar to an order that was made in *Azanchi v. Mobrhan-Shafiee*, 2021 BCCA 55 [Azanchi BCCA] at paras. 55–57. In that case, the respondent directed that her employment earnings be deposited into an account held by her mother for the benefit of the parties' child.
- [122] In *Azanchi BCSC*, the trial judge found that the claimant was aware that funds had been placed into an account held by respondent's mother but did not know the precise amount. The trial judge also found that the respondent's mother held these funds in trust for her grandchild and that the respondent did not have a beneficial interest in the funds.
- [123] On appeal, the British Columbia Court of Appeal ("BCCA") expressed some concerns about whether the funds were appropriately being used for the benefit of the child. Consequently, the BCCA ordered that both parties had the right to make inquiries about the amount and status of the funds as well as the right to be consulted by the trustee before any use is made of the money: *Azanchi BCCA* at para. 57.
- [124] The facts in this case are different, most notably because the trust in this case was not settled using funds that would otherwise have been family property. The respondent's uncle settled the trust. For this reason, the trust is not "family property" pursuant to subsection 84(1) of the FLA. There is also no evidence that the respondent has a beneficial interest in the property held in trust, nor is there any suggestion that the trust funds are being mismanaged.

- [125] Plainly stated, in this case, the trust funds are not relevant to the division of assets or to the parties' child support obligations.
- [126] I am satisfied that, in their role as E.P.'s guardians, and for as long as E.P. is a minor, the parties may make inquiries on the status of the trust funds.
- [127] I am not, however, convinced that the parties are entitled to be consulted before any use is made of the trust fund money. The decision as to how to use the trust rests with the trustee, bearing in mind that the funds must be used for E.P.'s benefit. I am also not convinced that E.P., as a minor, should have the power to disapprove any disbursements of the trust. Such a term would fundamentally change the terms of the agreement of E.P.'s trust.
- [128] I do, however, direct the parties, and the trustee, i.e., the respondent's mother, to heed the following warning from the BCCA:
- [30] I am conscious of the fact that [the respondent's mother] is not currently a party before the Court, and I am refraining from making any order directed to her, as trustee. She should, however, take note that neither the Supreme Court of British Columbia nor this Court will hesitate to make orders against a trustee who is not responsive to proper inquiries directed to them.

Azanchi BCCA at para. 30.

- [129] The funds held in trust for E.P. are solely for her benefit. If these funds are used for any other or improper purpose, this court will not hesitate to make orders against the trustee, be it the respondent, his mother, or any other duly appointed trustee who is responsible for misusing the trust funds.
- [130] In their role as E.P.'s guardians, and for as long as she is a child of the marriage and therefore a dependent of her parents, the parties may periodically make reasonable inquiries on the status of E.P.'s trust. The trustee is expected to accurately respond to these inquiries within a reasonable period of time.

Imputation of Income

Legal Principles

- [131] Section 19 of the Guidelines provides the court with broad discretion to impute the income of a party, including when a party is intentionally underemployed or unemployed, unless the underemployment "is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse": Guidelines, s. 19(1)(a).
- [132] The onus is on the person seeking to impute income to show, on a balance of probabilities, that there is an evidentiary basis to justify imputing an income: *Windle v. Windle*, 2010 BCSC 18 at para. 88.

- [133] The test for imputing income for intentional underemployment or unemployment is one of reasonableness, considering the party's capacity to earn income in light of their age, education, health, work history, and work availability: *Marquez v. Zapiola*, 2013 BCCA 433 at para. 37.
- [134] For the purposes of determining whether a party is intentionally unemployed or underemployed, the court must consider whether that party has taken reasonable steps to obtain employment commensurate with their age, health, education, skill, and work history: *Bourque v. Gerlach*, 2006 BCCA 157 at para. 63.
- [135] Capacity to earn income includes both the ability to work and the ability to be trained to work: *Marquez* at para. 37. The following principles are also relevant to determining whether a parent is earning to their capacity:
- a) parents who are healthy and can work have a duty to seek employment;
 - b) reasonable income earning capacity will be based on consideration of a parent's age, education, experience, skills, health, and on-the-job opportunities that are reasonably available;
 - c) limited experience and skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job;
 - d) persistence in unremunerative employment may entitle the court to impute income; and
 - e) a parent cannot avoid child support by perusing unrealistic or unproductive career aspirations or by a self-induced reduction in their income.

Fong v. Fong, 2011 BCSC 42 at para. 82.

Positions of the Parties

- [136] The claimant asserts that the respondent has been intentionally underemployed for more than eight years because he has failed to seek any form of employment related to his past employment and experience, other than periodic contract work. Based on a six-week work contract that the respondent completed in 2023, the claimant asserts that the respondent's annual income should be imputed at between \$80,000 and \$160,000.
- [137] The respondent counters that he is not, and has not been, intentionally underemployed or unemployed. He asserts that his lack of employment is caused by his misuse of alcohol, combined with the competitive nature of the software job market that makes it difficult for older persons to find employment.

Relevant Facts

- [138] The respondent joined a medical imaging company in 2003 and was laid off in May 2017. In the subsequent year, he received salary and benefits as part of a severance package. During this period, he did not look for another job. He also did not take advantage of the job search services provided by his former employer.
- [139] After losing his job, the respondent began drinking heavily. Eventually, he was diagnosed with Alcohol Use Disorder, attended a rehabilitation treatment program, and began taking medication that discouraged alcohol use. Admirably, the respondent overcame his dependence on alcohol. There is no objective or expert evidence before the Court suggesting that after the respondent concluded his alcohol treatment regime, and was no longer dependent on alcohol, his alcohol use prevented him from working.
- [140] Since 2018, the respondent has made very little effort to obtain employment. His explanation for why this occurred was vague and non-responsive. While the respondent blames ageism for his inability to obtain employment, the evidence reveals that he has not taken substantial steps to obtain remunerative employment.
- [141] Instead, the evidence shows that the respondent took just over a year off after being laid off. After this period, the only positions he apparently applied for are in the technology industry. He has made no efforts to try to obtain employment outside of the technology industry, nor has he tried getting retrained in a different field or applied for part-time positions.
- [142] Importantly, there is little proof that the respondent actively applied for work. While he suggested that he would take a position at Home Depot, the evidence reveals that in 2023 he only applied for two jobs, both of which were in the technology sector. There is no evidence that he applied for a job at Home Depot or anywhere else outside of the technology industry.
- [143] In 2023, the respondent obtained a six-week contract position in the technology sector. He earned \$20,000 for this work.

Discussion

- [144] Having considered the evidence before the Court, I find that since being laid off in May 2017, the respondent has not taken reasonable steps to obtain employment.
- [145] Logically, the best time for him to have obtained employment in the technology sector was immediately after he was laid off. Taking a one-year holiday because he received severance pay for that period was short-sighted and unreasonable, in light of his obligations to E.P. who was, at the time, only eight years old. The respondent ought to have known that as a parent, he had an obligation to provide for her for at least the next decade.

- [146] I recognize that this post-employment period was punctuated by an increased dependence on alcohol. Twice, he either quickly lost or failed to attend contract positions he obtained owing to his drinking problem. However, on his own initiative, the respondent obtained treatment and seemingly dramatically reduced or eliminated his reliance on alcohol. The evidence does not suggest that the respondent continued to struggle with problematic alcohol use and, consequently, his lack of employment after this period cannot be explained by reference to his misuse of alcohol.
- [147] The respondent also alluded to back problems and to medication he takes for this condition as an explanation for his unemployment. No expert evidence or details were provided to the Court about how this would prevent the respondent from seeking any form of employment. By the respondent's own admission, this condition only prevents him from doing work that involves lifting heavy items.
- [148] The respondent also testified that the technology sector prefers younger employees. Regardless, it was incumbent on the respondent to take reasonable steps to enhance and upgrade his skills in order to remain competitive in the job market. Alternatively, if he were unable to secure employment in the technology sector, he could have retrained for work in another industry and applied for other forms of employment. Unfortunately, he took none of these reasonable steps.
- [149] The respondent's testimony that he would accept a position at Home Depot rings hollow given his failure to apply for this sort of position. This contention also runs somewhat counter to his assertion that his back pain prevents him from doing work that involves lifting heavy items.
- [150] The only objective evidence of relatively recent work is a six-week contract in 2023 for which the respondent was paid \$20,000. However, little information was provided in respect of this contract work.
- [151] The respondent had recently turned 50 years old when he was laid off in 2017. His income in 2017 was approximately \$163,681. If he had immediately commenced looking for work and, accordingly, maintained his skills and knowledge, he probably would have obtained other employment, and his earnings would have been similar to, or more than, the salary and benefits he earned in 2017.
- [152] The respondent's failure to take reasonable steps to obtain employment over the ensuing eight years is disappointing, puzzling, and unreasonable, in light of his responsibilities as a parent. The respondent effectively took an early, yet completely unfunded retirement; the consequences of which were visited on his child. This course of action was, and remains, completely unreasonable.

- [153] I find that the respondent has an ongoing obligation to re-enter the workforce, and he must make diligent efforts to do so. Going forward, he should be able to earn at least \$100,000 per year by either obtaining more contracts, similar to the one he completed in 2023, or by using his obvious intelligence and work history to retrain and obtain employment in another field.
- [154] Based on these findings, I am satisfied that the respondent is intentionally unemployed or underemployed. In accordance with s. 19(1)(a) of the Guidelines, and the jurisprudential guidance described above, I am satisfied that an income of \$100,000 per year should be imputed to the respondent.
- [155] This imputed income will apply retroactively to 2018 and will apply going forward. If the respondent earns more than \$100,000, his actual income will be used for the purposes of calculating child support.

Parental Decision Making

Positions of the Parties

- [156] The parties agree that they will equally share most of the parenting responsibilities listed in s. 41 of the FLA, and that they will consult one another, and consider E.P.'s wishes, before making any major decisions regarding E.P.

- [157] The claimant seeks sole decision-making authority in respect of:

- 1) Decisions involving giving, refusing, or withdrawing consent to E.P.'s medical, dental, and health treatments: s. 41(f) of the FLA.

On this point, the claimant alleges that E.P. is uncomfortable with the respondent making her medical decisions, as he is generally controlling, and, on one occasion, mismanaged a skin condition E.P. experienced.

- 2) The ability to request and receive health, education, or other information from third parties regarding E.P.: s. 41(j) of the FLA.

- [158] In the event of a disagreement on a parenting decision, the claimant seeks authority to make the decision with the respondent having leave to apply to the court for directions, pursuant to s. 49 of the FLA.

- [159] The respondent denies that he mismanaged E.P.'s skin condition. Conversely, the respondent seeks equal decision-making responsibilities on all issues set out in s. 41, including with respect to health decisions and information.

- [160] In the event of a disagreement on a decision involving E.P., the respondent seeks that the dispute be resolved through mediation before either party applies to court.

Relevant Facts and Discussion

- [161] The claimant was more involved in E.P.'s upbringing than the respondent as she was primarily responsible for E.P.'s care prior to the parties' physical separation in 2022.
- [162] The claimant also prioritized E.P.'s needs. She pursued further education in a manner that ensured E.P. was well cared for. She also returned to the workforce when E.P. began school and resumed full-time work after the respondent was laid off in order to provide for E.P.
- [163] The respondent, by contrast, is somewhat headstrong and self-absorbed. For example, after losing his job, he refused to sell the Family Residence, and, instead, purchased a boat he could not afford. In addition to indulging his boating hobby, he was generally detached from E.P.'s daily care, and, for reasons that are unclear, has not diligently sought employment to provide for E.P.
- [164] E.P. is now 16 years old. She will have significant input on most decisions affecting her and may feel more comfortable discussing health issues with her mother. However, a disagreement about the treatment of a skin condition does not justify excluding the respondent from E.P.'s health decisions. Nor does it justify excluding him from receiving health, education, or other information from third parties regarding E.P.
- [165] Based on the evidence before me, I find that it is in E.P.'s best interests that both parties share equally in all parenting responsibilities listed in s. 41 FLA. I also order that both parties shall consult one another on all major decisions involving E.P. Given E.P.'s age and maturity, as described by both parties, I am satisfied that they will properly take her input into account when making any decision involving her.
- [166] In the event of a disagreement, I agree with the claimant's submission that she ought to be empowered to make the final decision and that, in such circumstances, the respondent may apply for directions pursuant to s. 49 of the FLA.
- [167] I reject the respondent's submission that the parties should pursue mediation before applying to the court for directions. Mediation only succeeds if both parties are willing to try to find a solution to issues on which they disagree. In my view, mandatory mediation is a contradictory term as it forces parties to enter a process they may be unwilling to genuinely engage with and that may be poorly suited for their needs. While the parties may undertake mediation, if they so choose, I decline to order mandatory mediation.

Child Support

Legal Principles

- [168] With some exceptions that are not relevant to the matter before the Court, each parent and guardian of a child has a duty to provide support for the child pursuant to the Guidelines: FLA, ss. 147(1) and 150(1).

[169] Section 3(1) of the Guidelines provides:

3 (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
- (b) the amount, if any, determined under section 7.

[170] The court has jurisdiction to make a retroactive award of child support pursuant to s. 15.1 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.): *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 81.

[171] Even if a court order for child support has not been made, a parent has an obligation to financially care for their child. The courts are able to enforce obligations that predate the order itself as such orders are "only enforcing an obligation that existed at the relevant time, and [are] therefore not making a retroactive order in the true sense": *D.B.S.* at para. 82.

[172] Additionally, in British Columbia, child support may also be ordered retroactively in accordance with s. 170(b) of the FLA.

[173] While the court exercises discretion in making a retroactive child support order, such awards should not be seen as exceptional: *D.B.S.* at para. 5.

[174] To determine whether a retroactive award is appropriate, the court should consider all relevant factors, including: the circumstances surrounding the delay in applying, the payor parent's conduct, the child's circumstances, and any hardship caused by a retroactive award: *D.B.S.* at paras. 105–116; *Michel v. Graydon*, 2020 SCC 24; *Colucci v. Colucci*, 2021 SCC 24.

[175] Once a court determines that retroactive child support is appropriate, the date for the retroactive award should be the date on which the payor parent received effective notice of the claim. Effective notice does not require the recipient parent to take legal action, all that is required is for them to have raised the issue: *D.B.S.* at paras. 118–122.

Positions of the Parties

[176] The claimant asserts that she is not liable to pay the respondent child support, principally because she pays for all of E.P.'s clothing, hair care, school fees, and phone, and, therefore, requires all of her income to provide for E.P.

[177] She asserts that the respondent should pay child support based on the Guidelines and the respondent's imputed income. She also requests that the Court order retroactive child support, commencing March 1, 2022.

[178] The respondent submits that he is entitled to retroactive child support of \$14,477 in respect of retroactive child support from January 1, 2022 to May 1, 2025. He also requests ongoing child support of \$337 per month.

Relevant Facts

[179] The parties equally parent E.P. Neither one of them has paid child support to the other since they physically separated in September 2022.

[180] The Claimant's line 150 income since 2022 is as follows:

- a) 2022 - \$48,587;
- b) 2023 - \$51,625;
- c) 2024 - \$70,656; and
- d) 2025 - \$73,000 (est.).

[181] As previously described, I have imputed income to the respondent in the amount of \$100,000 per year, commencing 2018 and going forward.

Discussion

[182] Based on an application of the aforementioned factors, I find that it is appropriate to order retroactive child support in this case.

[183] In September 2022, the parties ceased living together. E.P. commenced living equally with her parents in each of their residences at this time. She was 13 years old at the time. Since 2022, neither party has paid child support, but the claimant has paid for the majority of E.P.'s expenses. The respondent has made virtually no efforts to earn employment income to pay for E.P.'s expenses.

[184] On May 6, 2022, the claimant filed a notice of family claim in which she sought child support. Delay is therefore not a relevant factor. Finally, I find there would be no hardship caused by an award for retroactive support as this judgment grants both parties substantial proceeds from the sale of the Family Residence.

[185] In this case, the parties have equal parenting time with E.P. Therefore, the quantum of child support is determined by offsetting the amount of child support that each party is liable to pay based on the Guidelines and the parties' incomes in 2022 to 2025, respectively.

[186] The claimant's income for this period is based on her line 150 income. The respondent's income for this period is imputed to be \$100,000. Accordingly, the respondent is responsible for the following amounts:

- 1) For September 2022 to December 2022, the respondent will pay \$489 per month;
- 2) For 2023, the respondent will pay \$461 per month;

- 3) For 2024, the respondent will pay \$274 per month; and
 - 4) For 2025, the respondent will pay \$250 per month.
- [187] Accordingly, the respondent owes the claimant \$13,026 for child support, which was payable between September 2022 and September 2025. This amount will be deducted from the respondent's share of the family assets and will be paid to the claimant in a lump sum.
- [188] The parties will continue paying child support for E.P. until, at a minimum, she reaches the age of majority, which is 19 years old in British Columbia. Child support may be payable after E.P. reaches the age of majority if she continues to be dependent on her parents, for example while obtaining post-secondary education, and therefore continues to be a "child of the marriage". Going forward, the respondent will pay the claimant \$250 per month for child support.
- [189] Each year, the parties are to provide each other with their income tax Notices of Assessment to facilitate the calculation of the child support offset. Future child support will be calculated in accordance with the Guidelines, based on the parties' income, as listed in their respective Notices of Assessment. If the respondent fails to make over \$100,000 per year, a \$100,000 income will be imputed to him for the purposes of calculating his child support obligations.
- [190] The parties agree that their daughter is bright, ambitious, and interested in pursuing post-secondary studies. The parties' obligation to support her may therefore continue beyond her 19th birthday. In my view, it will be appropriate to review and possibly extend child support based on E.P.'s circumstances when she is 19 years old.
- [191] In light of the respondent's lack of income, the amount of \$40,000 will be set aside in trust, with the counsel for the claimant, from the respondent's share of the division of assets. The amount set aside represents approximately six years of child support at the rate of \$250 per month, \$200 per month for s. 7 special or extraordinary expenses ("Section 7 expenses" or "s. 7 expenses"), discussed further below, and a further 20% contingency. This amount will be used to pay the monthly child support obligations and the respondent's share of the s. 7 expenses owing by the respondent.
- [192] If the parties' incomes change such that the amount payable by the respondent is more or less than \$250 per month, the revised amount will be payable each month from the amount held in trust. If the claimant's income increases such that she becomes liable to pay offsetting child support to the respondent, she will be required to pay this amount to the respondent.
- [193] The amount remaining in trust will continue to be held in trust by counsel for the claimant until E.P. is no longer dependent on the parties and, accordingly, no longer a child of the marriage. At that point, any amount remaining in trust with counsel for the claimant will be payable to the respondent and will no longer be held in trust.

Section 7 Expenses

Legal Principles

- [194] Section 7 of the Guidelines permits a court to order that a party pay an additional amount to cover the costs of special or extraordinary expenses that are not covered by ordinary child support.
- [195] To be considered a special or extraordinary expense, the expense must fall within one of the categories of expenses listed in s. 7: *Clarke v. Clarke*, 2014 BCSC 824 at para. 50. The s. 7 categories are as follows:
- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
 - (b) that portion of the medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
 - (e) expenses for post-secondary education; and
 - (f) extraordinary expenses for extracurricular activities.
- [196] The above-referenced list of s. 7 expenses is exhaustive. If the claimed expense does not fit within any of those categories, it cannot be awarded to either party as a special or extraordinary expense: *Clarke* at para. 51.
- [197] Where the expense falls within one of the above categories, the court will only award the expense where the expense is both "necessary", as defined in relation to the child's best interests, and "reasonable" as measured against the combined financial means of the parents, as well as the spending patterns prior to separation: *Clarke* at para. 52.
- [198] If the expense claimed falls under subsection (d) [educational programs] or (f) [extracurricular activities], the party claiming the expense must prove that they are "extraordinary": *Clarke* at para. 52. Section 7(1.1) of the Guidelines provides guidance about what constitutes an "extraordinary expense".

Positions of the Parties

- [199] The claimant submits that over the past few years, the respondent enrolled E.P. in various programs, including dance, piano, and pottery, at an average cost of \$344 per month and that this amount was unaffordable and unsustainable for the parties. The claimant argues that she did not agree to incur these costs and therefore asserts that she should not be ordered to share the costs of these expenses.
- [200] The claimant further submits that E.P.'s dental expenses should be shared pro rata based on the parties' income or imputed income.
- [201] The respondent asserts that E.P. began participating in several extra-curricular activities at a very young age and that these activities contribute to E.P.'s well being.
- [202] He asserts that he should not be solely responsible for paying for these expenses and requests that all s. 7 expenses be shared between the parties in proportion to their gross annual income, which he asserts means that the claimant should pay 65% and he should pay 35%. He also claims that, between 2022 and March 2025, he incurred \$4,557 paying for s. 7 expenses and requests that the claimant reimburse him for \$2,962.

Factual Findings and Discussion

- [203] E.P. began dance lessons at age three or four, piano lessons in first grade, and pottery lessons in third or fourth grade. I accept the respondent's evidence that these activities were a "safe space" for E.P. at a time when the party's relationship was acrimonious. I am, therefore, satisfied that these expenses are extraordinary, necessary, reasonable, and in E.P.'s best interests.
- [204] I also find that dental expenses are a necessary and reasonable s. 7 expense.
- [205] The parties shall continue funding these activities, including dance, piano, and pottery. The cost of these activities, and the cost of E.P.'s dental care not covered by insurance, is payable by the parties in proportion to their income or imputed income. Applying the claimant's estimated 2025 income and the imputed income of \$100,000 to the respondent, the claimant shall pay 40% of the s. 7 expenses and the respondent shall be responsible for 60% of these expenses.
- [206] Previously incurred s.7 expenses will not be recalculated and repaid to either party. I am not convinced that a wholesale review of s.7 expenses incurred over the past three years, and a reallocation of them, is reasonable in the circumstances. This is for two reasons. First, the acrimonious relationship between the parties militates against this sort of painstaking exercise. Second, there is unlikely to be a substantial outcome of this exercise given my finding on the imputation of the respondent's income and the corresponding 60:40 ratio at which these expenses would be allocated to the respondent and the claimant, respectively.

[207] Any new expenses that the parties wish to incur for E.P. must be discussed and agreed to in advance. The cost of these expenses will be divided in proportion to the parties' incomes moving forward. If the respondent's income does not exceed \$100,000 an income of \$100,000 will be imputed to him.

Spousal Support

Legal Principles

[208] In accordance with s. 15.2(6) of the Divorce Act, when determining whether a party is entitled to spousal support, the court must consider the following relevant objectives:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[209] There are three forms of spousal support which a spouse may be entitled to: compensatory, non-compensatory, and contractual: *Zacharias v. Zacharias*, 2015 BCCA 376 at paras. 25-27.

[210] Compensatory support is intended to provide redress for an economic disadvantage arising from the marriage, or its breakdown, or to address the economic advantage enjoyed by the other partner as a result of the recipient spouse's efforts. Either an economic disadvantage or an economic advantage may provide a basis for an award of compensatory spousal support; both are not required: *Chutter v. Chutter*, 2008 BCCA 507 at paras. 50-51.

[211] As noted by the British Columbia Court of Appeal in *Chutter*:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support. Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown []

[Citations omitted.]

[212] The principles of spousal support also recognize that "marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution": *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25 (S.C.C.) at 870.

[213] Once a court has determined that a party is entitled to receive spousal support, they must determine the amount and duration of support. This determination is informed by the factors provided in s. 15.2(4) of the Divorce Act:

15.2 (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

[214] In making this determination, the court is required to consider the Spousal Support Advisory Guidelines [SSAG]: *Sebok v. Babits*, 2022 BCCA 2 at para. 24; *Dunnigan v. Park*, 2007 BCCA 329 at para. 16.

[215] Once the amount and duration are determined, it is for the trial judge to consider all the relevant factors and exercise discretion in determining whether a lump sum award for spousal support is appropriate in the circumstances: *Davis v. Crawford*, 2011 ONCA 294 at para. 69.

[216] *Davis* has since been endorsed by the BCCA, including in *Parton v. Parton*, 2018 BCCA 273 at paras. 47-48, where the BCCA indicates that the following principles apply when considering whether a lump sum award of spousal support is appropriate:

- a) In making an order for lump sum support, a court must take into consideration whether the payor has the ability to make a lump sum payment without undermining the payor's future self-sufficiency: *Davies* at para. 63.
- b) The court must weigh the perceived advantages of making a lump sum award in the particular case against any presenting disadvantages of making such an order: *Davies* at para. 66.
- c) The advantages of making a lump sum award are case-specific and may include: terminating ongoing contact between the spouses for any number of reasons (for example, short-term marriage; domestic violence; second marriage with no children, etc.); providing capital to meet an immediate need on the part of a dependant spouse; ensuring adequate support will be paid in circumstances where there is a real risk of non-payment of periodic support, a lack of proper financial disclosure or where the payor has the ability to pay lump sum but not periodic support; and satisfying immediately an award of retroactive spousal support:

Davies at para. 67.

- d) The disadvantages of a lump sum award can include: the possibility that the means and needs of the parties will change over time, leading to the need for a variation; the fact that the parties will be effectively deprived of the right to apply for a variation of the lump sum award; and the difficulties inherent in calculating an appropriate award of lump sum spousal support where lump sum support is awarded in place of ongoing indefinite periodic support: Davies at para. 68.

[217] A lump sum award may also be justified in circumstances where the animosity between the parties is such that it is in the interests of all concerned that there be a clean break in the relationship to avoid further acrimony: *Robinson v. Robinson*, 2011 BCSC 1489, aff'd 2012 BCCA 497 at paras. 82–84 and 98.

[218] The considerations with regard to the suitability of retroactive spousal support are similar to the factors applicable to retroactive awards of child support as set out in *D.B.S.* However, concerns over notice, delay, and misconduct must be weighed in light of the legal principles and objectives that underpin the spousal support regime: *Kerr v. Baranow*, 2011 SCC 10 at paras. 207–208.

[219] The court may also consider any hardship occasioned by a retroactive award: *J.L.T. v. H.L.S.*, 2024 BCSC 1420 at para. 138.

Positions of the Parties

[220] The claimant seeks compensatory spousal support because she has been economically disadvantaged by the marriage. The claimant also argues that her decision to stay at home during E.P.'s early years enabled the respondent to focus on his job before he was laid off.

[221] She denies that the respondent is entitled to spousal support because, in her view, there is no evidence that he was economically disadvantaged by their relationship.

[222] The respondent seeks lump sum spousal support of \$10,744 and denies that the claimant is entitled to spousal support. The respondent seeks this amount on the basis that he exhausted his personal finances so that family expenses could be paid. He also asserts that the respondent is currently in a dire financial situation while the claimant is financially stable, and therefore, she should be required to pay spousal support.

[223] Alternatively, the respondent asserts that if he owed the claimant any spousal support, that this amount has already been paid by virtue of the respondent paying the majority of the household expenses.

Factual Findings

[224] The parties mutually agreed that the claimant would stay at home to parent E.P. for the first five years of E.P.'s life.

- [225] The claimant upgraded her skills by enrolling in Royal Roads University in January 2012 and working towards a degree in Justice Studies. She resumed working in 2014 but did not increase to full-time working hours until 2018, after the respondent was laid off.
- [226] The respondent began working in a technology position with a medical imaging company in 2003 and was laid off in 2017. He did not look for work in the year after he was laid off and has made minimal efforts to find work since then. He has not taken any formal courses to upgrade his skills or retrain.

Discussion

- [227] The claimant suffered an economic disadvantage by leaving the workforce in 2009, when E.P. was born. She did not return to work until 2014. She is therefore entitled to spousal support on a compensatory basis.
- [228] In determining the length and quantum of support, the following factors are relevant. The parties moved in together August 2007 and E.P. was born in June 2009. The parties separated on January 1, 2012, but continued living in the family residence until September 2022.
- [229] During this time, the claimant provided the majority of E.P.'s care.
- [230] The parties' separation was precipitated by the claimant's laudable decision to upgrade her skills by enrolling in a distance learning program at Royal Roads University. The claimant paid for this program entirely out of her own funds and made appropriate arrangements for E.P.'s care during the in-residence portion of her university program. This included the reasonable request of asking the respondent to use some of his vacation leave to care for their daughter.
- [231] By contrast, the respondent continued working full-time after E.P. was born, until he was laid off in 2017. The termination of his employment was not related to him taking on a caregiving role for E.P., and he did not assume additional household or parental responsibilities after being laid off.
- [232] Considering the SSAG, I am satisfied that the claimant is entitled to 53 months of spousal support. 53 months represents the length of time the parties maintained a marriage-like relationship from the time they moved in together (in August 2007) until the time of their separation (January 1, 2012).
- [233] Having decided the length of the claimant's entitlement, I must now consider the quantum. The SSAG provides three ranges for spousal support: low, mid, and high. These ranges allow the court to adjust the amount of support to reflect the circumstances of the parties. Chapter 9 of the SSAG enumerates a non-exhaustive list of factors that may be considered when deciding the appropriate range.

- [234] Having considered the factors, and especially the evidence before the Court that the claimant left the workforce to care for E.P., I find that the claimant is entitled to 53 months of support in the mid-range.
- [235] Applying the D.B.S. factors, I am also satisfied that the claimant is entitled to retroactive spousal support. The claimant sought the support during the same year that the parties physically separated. I therefore find that the claimant did not delay in seeking support.
- [236] I reject the contention that she should have sought spousal support before the parties physically separated. Although their intimate relationship had terminated, their financial lives remained inextricably intertwined during the period that they lived together, with E.P., in the Family Residence. It would not have been practical to seek support during this period.
- [237] Lastly, while I am aware of the disadvantages of a lump sum award, in this case, the benefits outweigh the possible disadvantages.
- [238] Amongst these considerations is the fact that the claimant is unlikely to receive the funds if they are not ordered in a lump sum. The respondent has been persistently unemployed and seems unwilling to find gainful employment. I am therefore concerned about the respondent's capacity to pay spousal support on an ongoing basis. A lump sum award taken from his share of the net sale proceeds of the Family Residence is the best way to ensure that the claimant will receive her compensation.
- [239] Another advantage of ordering a lump sum award is that it will enable the claimant to attain her long-sought objective of ending the respondent's ability to dictate the financial terms of her future. She sought to sell the Family Residence and go their separate ways many years ago. The respondent obstructed this objective by refusing to sell the Family Residence and threatening the claimant that she would get nothing if it were sold.
- [240] A lump sum award will terminate the respondent's financial control over the claimant and will provide the claimant with the capital she should have otherwise received earlier. This will enable her to plan her own financial future and will create a clean break for the parties as far as most of their financial affairs are concerned.
- [241] Finally, a lump sum spousal support will not cause the respondent undue hardship. As a result of this order, the respondent will have access to his share of the net sale proceeds of the Family Residence. The respondent is able to use these funds to pay the claimant lump sum spousal support.
- [242] In sum, I order that the respondent is responsible for paying the claimant 53 months of spousal support in the mid-range. The claimant's entitlement to this support began when the parties physically separated in September 2022. Considering the claimant's income, and the respondent's imputed income in 2023, the first full year after the parties separated, the claimant is entitled to lump sum spousal support of \$38,000.

[243] This amount will be paid in a lump sum to the claimant from the respondent's share of the net sale proceeds of the Family Residence.

Summary of Orders

[244] In conclusion, I make the following orders.

Divorce

[245] Subject to s. 12 of the Divorce Act (Canada), the claimant, K.D.P.P., and the respondent, G.P.P., who were married at Vancouver, British Columbia on December 6, 2008, are divorced from each other.

[246] The divorce is to take effect on the 31st day after the date of this order.

Separation Date

[247] The parties separated on January 1, 2012.

Family Property, Family Debt, and Excluded Property

[248] The net sale proceeds of the Family Residence held in trust by counsel for the respondent, in the amount of \$888,283, following advances of \$150,000 to each party, will be dispersed within 15 days of this order as follows:

a) \$357,995 payable to the claimant.

This amount represents the claimant's \$286,969 entitlement in the net sale proceeds of the Family Residence, plus retroactive child support in the amount of \$13,026, lump sum spousal support in the amount of \$38,000, and the \$20,000 compensation payment in respect of the Baltic sailboat.

b) \$415,288 payable to the respondent.

This amount represents the respondent's \$601,314 entitlement in the net sale proceeds of the Family Residence, less retroactive child support in the amount of \$13,026, lump sum spousal support in the amount of \$38,000, the amount of \$40,000 to be held in trust by counsel for the claimant to secure the respondent's future child support and s. 7 obligations, the \$20,000 compensation payment in respect of the Baltic sailboat, and \$75,000 which will remain in trust with counsel for the respondent as security for costs.

[249] Each party will keep the vehicle in his or her possession.

[250] Each party will keep the funds in their respective personal banking accounts, RRSP, and other investments.

[251] The respondent will retain the Baltic sailboat in his possession.

[252] In their role as E.P.'s guardians, and for as long as she is a minor, the parties may make inquiries on the status of E.P.'s trust.

Imputation of Income

- [253] An income of \$100,000 per year will be imputed to the respondent for the purposes of calculating child and spousal support.
- [254] This imputed income will apply retroactively to 2018 and will apply going forward. If the respondent earns more than \$100,000, his actual income will be used for the purposes of calculating child support and s. 7 expenses.

Parenting Orders

- [255] Both parties will be joint guardians of E.P.
- [256] Both parties will share equally in parenting responsibilities listed in s. 41 of the FLA. The parties will consult each other on all major decisions regarding E.P. Should the parties disagree on a parenting decision, they will make best efforts to resolve the dispute between themselves, if they are unable to do so, the claimant will make the final decision. In such cases, the respondent may apply to the court for direction, pursuant to section 49 of the FLA.
- [257] Each guardian will have the right to obtain information concerning E.P. directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers.
- [258] The parenting schedule will be equal on a two-week rotation described as follows:
3/2/2/3/2/2 days, with each parent having alternating weekends with E.P., or as agreed between the parties, primarily considering E.P.'s own wishes.
- [259] This parenting arrangement qualifies as shared parenting pursuant to s. 9 of the Guidelines (Federal Child Support Guidelines).

Past and Future Child Support and s. 7 Expenses

- [260] The respondent is required to pay the claimant retroactive child support in the amount of \$13,026 for the period between September 2022 and September 2025.
- [261] Commencing October 1, 2025, the respondent shall pay the claimant \$250 per month in child support.
- [262] Moving forward, child support will be calculated in accordance with the Guidelines, based on the parties' income as listed in their income tax Notices of Assessment, or the respondent's imputed income if he earns less than \$100,000 per year.
- [263] The parties will continue paying child support for E.P. until, at a minimum, she reaches the age of 19.
- [264] No amount is payable by either party in relation to past s. 7 expenses.

- [265] Moving forward, child support and the proportion of s. 7 expenses will be calculated in accordance with the Guidelines, in proportion to their respective incomes, or the respondent's imputed income. In 2025, these expenses will be paid 40% by the claimant and 60% by the respondent.
- [266] The parents will pay E.P.'s ongoing s. 7 expenses, including the costs of dance, piano, and pottery classes. Other similar expenses will be paid for on the same basis provided that the expense has been agreed between the parties in writing, in advance of the expense being incurred.
- [267] To calculate the parties' child support and s. 7 expenses going forward, each party will make disclosure of the income documents referred to in s. 21 of the Guidelines, including income tax returns and Notices of Assessment, annually by June 30, beginning June 30, 2026, for as long as E.P. remains a child of the marriage.
- [268] If the respondent fails to make over \$100,000 per year, a \$100,000 income will be imputed to him for the purposes of calculating child support and s. 7 expenses.

Trust Provisions

- [269] The amount of \$40,000 will be set aside in trust with counsel for the claimant from the respondent's share of the division of assets to ensure the payment of future child support and s. 7 expenses. This amount will be used to pay the monthly child support obligations and the share of the s. 7 expenses owing by the respondent.
- [270] If the parties' incomes change such that the amount payable by the respondent is more or less than \$250 per month, the revised amount will be payable each month from the amount held in trust.
- [271] The amount remaining in trust will continue to be held in trust by counsel for the claimant until E.P. is no longer dependent on the parties and, accordingly, no longer a child of the marriage. At that time, any amount remaining in trust with counsel for the claimant will be payable to the respondent.

Spousal Support

- [272] The claimant is entitled to retroactive lump-sum compensatory spousal support in the amount of \$38,000, payable from the respondent's share of the net sale proceeds of the Family Residence.

Costs

- [273] If the parties wish to make submissions on costs, they may be filed within 30 days of the date of this judgment. If the parties wish to make oral submissions on costs, they may make the necessary arrangements with Supreme Court Scheduling within this timeframe.

- [274] If no submissions are received, the claimant will have her costs at Scale B.
- [275] Pending a determination on costs, \$75,000 will be set aside in trust, with counsel for the respondent, as security for the payment of costs, from the respondent's share of the net sale proceeds of the Family Residence.
- [276] I will remain seized on this matter for one year from the date of this judgment to decide any issues with respect to the implementation of these orders.
- "Basran J."
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