

CANADA / JUDGMENT

K.H. v. L.H.

2024 BCSC 304

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 304 K.H. v. L.H. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: K.H. v. L.H., 2024 BCSC 304 Date: 20240223 Docket: E18125 Registry: Smithers Between: K.D.H. Claimant And L.E.H Respondent Before: The Honourable Justice Chan Reasons for Judgment Counsel for the Claimant: J.M. Cochrane Counsel for the Respondent: W.C. MacGregor Place and Date of Trial/Hearing: Smithers, B.C. January 22-24, February 12, 2024 Place and Date of Judgment: Smithers, B.C. February 23, 2024 Table of Contents Introduction.. 3 Factual Background.. 3 Issues.. 6 Spousal Support for K.H. 7 Legal framework. 7 Is K.H. entitled to spousal support?. 8 What is the duration and amount of spousal support?. 8 Division of Family Debt 11 Legal framework. 11 Analysis. 12 Duration of the relationship: s. 95(2)(a) 13 Spouse's contribution to the career of the other spouse: s. 95(2)(c) 14 Whether family debt was incurred in the normal course of the relationship: s. 95(2)(d) 14 Any other factor that would lead to a significant unfairness: s. 95(2)(i) 14 Whether the objectives of spousal support have been met: s. 95(3) 15 Conclusion on Debt 15 The Amounts Paid by L.H. Post Separation for Housing Expenses. 15 Conclusion on Distribution of Trust Funds. 16 Division of Pensions. 16 Child Support and Parenting Arrangements. 17 Divorce and Name Change.. 19 Conclusion.. 19

Introduction

- [1] The main issues in this family law trial are division of assets and debts and spousal support for the wife, K.H. The parties started cohabitation in 2007 and separated for the final time in 2019. The parties had initially separated briefly in 2018. They have two children aged 12 and 10. I have used initials to protect the identity of the children. During the course of the trial, the parties agreed on a parenting schedule and child support. The parties also agree on division of pensions and a divorce. K.H. requests to change her surname back to her maiden name.
- [2] The parties are in dispute over what each should receive from the \$120,000 currently held in trust, which are the remaining proceeds from the sale of a family home. Each has already received approximately \$136,340, but a further \$120,000 remain. In terms of the monetary orders the parties seek, they are both focused on this \$120,000 and for the most part, are not seeking either side come up with additional sums. Factual Background

- [3] Both parties testified. They were the only witnesses. While each side made submissions about the lack of credibility of the other party, for the most part, I found both to be honest witnesses. Neither party had a very good recollection of dates or the details of events or payments. I found both parties readily admitted facts that could be adverse to their interest. It was clear to the Court that both parties wanted a decision on how to divide the remaining \$120,000, so they can move on with their lives. I make the following findings.
- [4] The parties met in 2007, when K.H. was 18 years old, and L.H. was 27 years old. Shortly after meeting, they started living together in the Smithers area. L.H. works at the local West Fraser mills. It is unclear exactly what his job is, but he has been working at the mill since sometime before the parties met in 2007. K.H. testified L.H. was initially working in production, then trained as a "power engineer" at some point, but she did not know L.H.'s current job title. L.H. did not offer any testimony about his work. My understanding is that he has had some job changes, but all his work has been at the mill.
- [5] K.H. had not completed secondary school when the parties first met. She eventually completed enough credits to graduate in 2016. She has also taken some college courses. She did not describe having a long work history. She testified the agreement was she would stay home to look after the children while L.H. would work and support the family.
- [6] The children were born in 2011 and 2014. The parties married in November 2014. K.H. did not work outside the home after the children were born. At some point, the parties purchased a house near Smithers.
- [7] The parties initially separated in June 2018. L.H. wrote a handwritten separation agreement, dated August 14, 2018 ("Separation Agreement"). This Separation Agreement was not signed by either party. However, it is clear from the evidence of K.H. that she did agree with the terms, which were shared custody, that child and spousal support cannot be paid until the family home was sold, and that L.H. would be responsible for paying the mortgage (\$1,456/month), the electricity (\$200/month), the cell phone (\$125/month), and the line of credit (\$416).
- [8] There was a court appearance in relation to a different matter in August or September 2018. K.H. believes that was an action she had initiated for a divorce, which she later abandoned. In any event, K.H. testified they met at court and got back together two days later. They stayed together until they ultimately separated on March 1, 2019. Both parties agreed the Separation Agreement applied to the period after March 1, 2019.
- [9] After separation, L.H. moved out of the family home. He testified he lived with different friends. L.H. continued to pay for the expenses related to the house, including the mortgage and line of credit which was secured against the house. L.H. made all payments related to the house until it was sold in October 2021. L.H. argues the total of the payments he made from March 1, 2019 to October 1, 2021 to upkeep the house exceeded his child support obligations during this period of time, and he seeks reimbursement for these overpayments.

- [10] L.H. has an older child ("H."), born in 2004, from a different relationship. That relationship ended in 2005. Initially, he paid child support of \$300 a month for H. However, after H. and her mother moved to Penticton in 2007, L.H. stopped paying child support. L.H. testified he had an agreement with the mother of H. that if he did not challenge the move, he did not need to pay child support. In any event, in 2019, the mother of H. started an action against L.H., seeking arrears in child support. A provincial court order was made on June 25, 2019 that L.H. is to pay \$922 a month in child support for H. starting on December 1, 2018, and that the amount of arrears in child support from October 1, 2007 to June 30, 2019 were \$72,317. The total amount paid for these child support arrears including interest was \$84,005.93. I will round this to \$84,000. The parties agree this amount was paid to the mother of H. in October 2021 from the proceeds of sale of the family home.
- [11] L.H. takes the position that approximately \$69,500 of the arrears is a family debt, that being the amount of child support arrears as of the date of separation of the parties on March 1, 2019. L.H. argues this portion of the debt was incurred during the relationship. As I understand it, L.H. is seeking to have the \$69,500 debt divided equally between them, so each would be responsible for approximately \$34,750. K.H. argues this is not a family debt, as the child support was L.H.'s sole responsibility. If the Court finds this to be a family debt, K.H. argues it ought to be divided unequally so L.H. becomes solely responsible.
- [12] K.H. seeks spousal support. She argues she has been disadvantaged as she did not work outside the home during the marriage due to childcare responsibilities. After separation, their daughter was diagnosed with diabetes in 2019. K.H. testified that her daughter continues to require multiple medical appointments and travel to hospitals to deal with her care. K.H. testified she is the parent mainly responsible for attending to her daughter's needs.
- [13] K.H. has little work history and few job opportunities. She has plans to train as an early childhood educator. She has recently applied to an Indigenous early childhood education program. She does not yet know if she will be accepted. As I understand it, the training if completed will lead to a certification. She advises she has a recent job offer at a daycare. A job requirement is that she has the certification for early childhood education, but the employer is willing to hire her if she is accepted into the education program and will treat her as a trainee until she receives the certification. She provided few details about the job opportunity or the early education program, as she testified she did not know many of the details. It seems like neither the job nor the program requires a full-time commitment. While she did not know how much the job will pay, she testified she expects it to be approximately \$17 an hour, which is what she earned when she worked previously as an education assistant in 2018 and 2019. She could not provide many details about how much she earned from that job, but she confirmed it was a job on the reserve. She lost that job when the program shut down due to the pandemic. She did not believe she worked full time. If K.H. is successful in receiving her certification, she believes she can obtain a job that pays \$30 to \$35 an hour.

Issues

[14] The issues are:

1. Is K.H. entitled to spousal support? If yes, what is the duration and amount?
2. Are the arrears in child support owed on account of H. a family debt? If so, should the Court make an unequal division?
3. Were the payments made by L.H. to maintain the house after separation overpayments made by L.H. to K.H. for child support? If so, how much is the overpayment? Spousal Support for K.H.

Legal framework

[15] Spousal support orders may be made under either the Family Law Act, S.B.C. 2011, c. 25 [FLA] or the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), [DA]. In this case, K.H. seeks spousal support under both the FLA and the DA. However, the objectives and factors that must be considered for spousal support mirror each other in both legislations: *Li v. Liu*, 2014 BCSC 1110 at para. 35.

[16] The fundamental principles underlying spousal support are described by our Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507:

[45] Section 15.2 of the Divorce Act is the main provision governing entitlement to spousal support. Subsection 15.2(6) provides that a spousal support order should meet the following objectives:

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[46] In order to achieve a fair and equitable distribution of resources, all four of these objectives should be examined: *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 S.C.R. 813 at 850-853, 43 R.F.L. (3d) 345. Having regard to these policy objectives, courts must consider the condition, means, needs and other circumstances of each spouse, including the factors set out in s. 15.2(4):

- (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.

[47] Based on the statutory provisions and the case authorities, the Supreme Court of Canada has identified three grounds for entitlement to spousal support: (1) compensatory support, which primarily relates to the first two objectives of the Divorce Act; (2) non-compensatory support, which primarily relates to the third and fourth objectives; and (3) contractual support

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (Moge, at 861-863; Bracklow, at para. 39). Is K.H. entitled to spousal support?

[17] While K.H. seeks spousal support on both compensatory and non-compensatory basis, she relies mainly on arguments that she is entitled to compensatory spousal support. L.H. argues K.H. has not shown entitlement. He argues she has been wilfully unemployed since separation, as the evidence is she only started applying to jobs in the last few months. He argues it was not the relationship which caused her economic disadvantage, but her own personal choices. She was a high school dropout when the parties met, and in fact benefitted from the relationship as she became a high school graduate during the course of their marriage.

[18] In my view, it is clear that K.H. is entitled to compensatory spousal support. She has been economically disadvantaged from the marriage, as she stayed home to take care of the children. She made sacrifices by assuming childcare and household responsibilities. She did not gain any traction in the job market due to the requirements on her to be the primary caregiver. She has lost out on work experience and training. She is leaving the relationship with little work experience. What is the duration and amount of spousal support?

[19] As I understand it, K.H. seeks a lump sum amount in spousal support, to be paid from the money held in trust. She argues from the date of separation, she ought to be entitled to approximately eight years of spousal support. She is seeking a lump sum of \$65,000 payable now from the trust funds. Her counsel submitted K.H. is not seeking monthly spousal support payments, as K.H. is of the view L.H. will not pay.

[20] K.H.'s submissions on spousal support were difficult to follow. While she is seeking a lump sum, she provided no DivorceMate calculations that included a lump sum award. K.H. provided three sets of calculations. The first set assumed L.H. has a yearly Guidelines income of \$95,000 and K.H. has no income. This calculation provided monthly spousal support payments of \$1,602 at the low range, \$1,970 at mid range, and \$2,208 at high range.

- [21] Another calculation was based on L.H. having an annual income of \$71,656, and K.H. having no income. At the low end, this was \$561 in spousal support, \$736 at the mid range and \$916 at the high end.
- [22] A third calculation submitted by K.H. was based on L.H. having an annual income of \$71,656 and K.H. having an income of \$12,240 a year. This resulted in calculations of no spousal support at the low or mid range, and \$203 at the high end.
- [23] L.H.'s income from his tax filings are the following: · 2018: \$98,738; · 2019: \$70,834; · 2020: \$77,057; · 2021: \$67,218; and · 2022: \$71,657.
- [24] While L.H. has not yet filed his tax return for 2023, he expects his income will be the same as in 2022. L.H. argues there is evidence that K.H. has earned income in 2018 and 2019 which is not reflected in her tax returns, as she worked at a job on the reserve.
- [25] According to K.H.'s most recent financial statement from January 2024, she reports her income to be \$1,505 a month in social assistance payments. She testified she has been receiving this amount since 2022. She reported income of \$2,880 in 2019 and income of \$29,276 in 2020. She testified the income was from the Canada Emergency Response Benefit and employment insurance payments, due to the pandemic.
- [26] L.H. argues he does not have the ability to pay spousal support. He has an income of approximately \$3,200 per month after deductions. He pays \$1,097 in child support to K.H. He pays approximately \$600 for support of H. He has a new child to support from his current relationship. L.H. argues even if the Court finds K.H. is entitled to spousal support, the amount of spousal support should be set at zero.
- [27] In terms of length of a support order, I find the duration of the spousal support order should be seven years. It has been approximately five years since separation. The evidence is K.H. is on her way to a viable career in early childhood education. She has prior work experience as an education assistant, and is hopeful she will gain admission to the certification program. The evidence she provided is that such a training program is not very long. Once she receives the certification, she has the ability to earn \$35 an hour.
- [28] The parties separated in 2019. Any spousal support order must be based on an average income of L.H. from 2019 to 2023, which is approximately \$71,691. Relying on the second set of calculations submitted by K.H., that would be spousal support of \$561 per month, at the low end. I find there is no evidence to support spousal support should be in the mid to high end, considering the financial circumstances of the parties. That is approximately \$7,092 per year.

- [29] Starting in 2022, K.H. testified she has been receiving social assistance. According to the third set of calculations submitted by K.H., this brings any spousal support order to zero. Moving forward, there is no reason to believe K.H. will not be able to obtain an income of \$12,240 per year, and that effectively means spousal support would be zero, unless L.H.'s income changes.
- [30] I find then the best calculation of K.H.'s entitlement to spousal support is three years based on \$7,092 per year, from 2019 to 2021, which is \$21,276. I have considered if I ought to make a support order into the future at a minimal amount, to allow K.H. an opportunity to apply to vary the order should L.H.'s income increase. There is evidence that L.H. at one point in time had a higher paying job at the mill. However, in consideration of K.H.'s wish to have a lump sum to avoid prospects of future litigation, in my view, the lump sum should be increased modestly to allow for the possibility that L.H.'s income may increase from now until 2026, as the duration of support has been found to be seven years. I find a lump sum award of \$25,000 in spousal support is fair and just in the circumstances.
- [31] K.H. is awarded a lump sum of \$25,000 in spousal support. Division of Family Debt

Legal framework

- [32] Property division is governed by Part 5 of the FLA. The relevant sections are the following: Equal entitlement and responsibility 81 Subject to an agreement or order that provides otherwise and except as set out in this Part and Part 6,
- (a) spouses are both entitled to family property and responsible for family debt, regardless of their respective use or contribution, and
 - (b) on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt Family debt 86 Family debt includes all financial obligations incurred by a spouse (a)during the period beginning when the relationship between the spouses begins and ending when the spouses separate, and (b)after the date of separation, if incurred for the purpose of maintaining family property Unequal division by order 95 (1) The Supreme Court may order an unequal division of family property or family debt, or both, if it would be significantly unfair to
 - (a) equally divide family property or family debt, or both, or
 - (b) divide family property as required under Part 6.
- (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);

- (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 have not been met.
- [33] Family debt is defined in s. 86 of the FLA as including all financial obligations incurred by a spouse during the relationship. Under s. 81 of the FLA, there is a presumption in favour of an equal division of family debt. That presumption is subject to s. 95 of the FLA which grants the court a discretion to order unequal division if equal division would be significantly unfair. The term "significantly unfair" has been interpreted to mean "unfairness [that] is compelling or meaningful having regard to the factors set out in s. 95(2)" and "something objectively unjust, unreasonable or unfair in some important or substantial sense": *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 60.

Analysis

- [34] Neither counsel provided the Court with any case authorities on any issues. Counsel for K.H. referred to two cases in her submission while counsel for L.H. referred to none.
- [35] K.H. relies on *L.A.K. v. S.J.A.*, 2022 BCSC 124, as authority for the proposition that student loans and unpaid support obligations from a previous relationship were found to be not family debt. However, after submissions when I had an opportunity to look up the case, I note the spouse with these debts conceded these were not family debt: *L.A.K.* at para. 61.

The other decision referred to by K.H. was *Singh v. Singh*, 2020 BCCA 21. The Court was not provided with any specific paragraph references, but it appears K.H. is relying on this decision for the general discussion on unequal division, as from my reading of the decision there were no prior support arrears involved.

- [36] In my view, based on the broad wording of s. 86 of the FLA, I find the support arrears owed to the mother of H. to be family debt. The support obligations arose during the course of the relationship between the parties.
- [37] K.H. argues this family debt ought to be divided unequally, as L.H. should be solely responsible for it. As I understand the evidence, the support arrears have been paid from the proceeds from the sale of the house, before L.H. and K.H. received their individual \$136,340 share. The arrears were secured by a lien placed against the home. There remains \$120,000 in trust. K.H.'s position is that if L.H. is solely responsible for this family debt, then she ought to be reimbursed because it was taken out of the total proceeds of the sale of the house.
- [38] L.H. argues this debt of child support arrears ought to be divided equally. He argues the only applicable factor is s. 95(3) of the FLA, the financial means of the parties. As K.H. has already received \$136,340 from the sale proceeds, L.H. argues it is far from the case that she is leaving the relationship with nothing.
- [39] In my view, this family debt ought to be divided unequally. I place the most significance on the following factors. Duration of the relationship: s. 95(2)(a)
- [40] This was a fairly lengthy relationship from 2007 to 2019, almost 12 years. The parties have two children together. Spouse's contribution to the career of the other spouse: s. 95(2)(c)
- [41] K.H. stayed home throughout the relationship, and starting in 2011 with the birth of their first child, she was the primary caregiver. She also worked in the farm, taking care of the couple's animals. Her contributions allowed L.H. to continue to work at the mill, which at times required long shifts, alternating days and nights. The evidence is L.H. attained promotions at work throughout their relationship. If L.H. had to be the primary caregiver for the children, it would have been difficult with his work schedule. Whether family debt was incurred in the normal course of the relationship: s. 95(2)(d)
- [42] I find the support arrears were not incurred in the normal course of the relationship. There is no evidence the decision to not pay child support for H. was a decision jointly made by the parties. While K.H. was aware throughout that L.H. was not paying child support for H. after H. moved in 2007 to Penticton, K.H.'s evidence was she believed he should have been paying. K.H.'s evidence was she did not agree with L.H.'s non-payment of his support obligations. K.H.'s evidence is if L.H. had kept up with his child support payments, it was a small amount each month and would not have ballooned into this large debt. Any other factor that would lead to a significant unfairness: s. 95(2)(i)

- [43] I find dividing this debt equally would lead to significant unfairness. L.H. testified he did not pay child support for H. after 2007 due to an agreement he had with the mother of H., that he would not contest her relocation in exchange for non-payment of child support. As counsel for L.H. seemed to concede, this agreement is contrary to public policy. To allow for equal division of this debt would be to indirectly condone an agreement that is contrary to the principles of our family law, that child support is a right of the child. It is objectively unjust to put the burden of this debt on K.H., who was not in favour of L.H. not fulfilling his child support obligations. To require K.H. to pay for these arrears would be significantly unfair to her, as objectively she did not acquire the debt, she did not agree with it, and it was a debt that should never have been incurred. While I acknowledge L.H.'s argument that if he had paid child support for H., that would have resulted in less money for K.H. and the children, he ought to have prioritized his child support payments. Whether the objectives of spousal support have been met: s. 95(3)
- [44] I find the relative financial means of the parties also in favour of unequal division of this debt. As discussed under spousal support, K.H. is less able to earn income due to the circumstances of their relationship. The breakdown of the relationship has been more difficult for her financially. Further, the Court recognizes that K.H. has incurred more of the financial consequences arising from her care of the children, and her financial need will likely exceed the spousal support award. Conclusion on Debt
- [45] This debt should be divided unequally. L.H. is solely responsible for this debt. L.H. is to reimburse K.H. for \$42,000, which is half of the arrears. The Amounts Paid by L.H. Post Separation for Housing Expenses
- [46] After the parties separated, K.H. and the children continued to reside at the family home. L.H. moved out, staying with friends and then eventually renting a place. The parties agree that L.H. continued to pay the mortgage, the line of credit, the insurance for the house and the utilities after separation in March 2019, until the house was sold in October 2021. K.H. testified that L.H. only paid the hydro bill for a short period of time after separation, and that she had to open an account in her name and pay for it to make sure the house was heated. This was not denied by L.H. However, for the other payments, the evidence was both parties agreed L.H. kept up the payments until the house was sold.
- [47] L.H. argues the amounts he paid for these expenses exceeded his child support obligations during that period of time. He seeks to be reimbursed for the overpayments. K.H. argues the amounts paid do not exceed the total amount L.H. was required to pay for both child and spousal support during this time period. K.H. argues the calculations put forth by L.H. are not reliable, as he did not put into evidence any of the source documents. As such, K.H. argues there is no evidence of any overpayments.

- [48] In his testimony, L.H. referred to a spreadsheet he prepared of his payments from July 2018 to October 2021. The spreadsheet included dates and amounts he paid for the mortgage, line of credit, insurance and other items. He testified he compiled the information from his bank statements. K.H. did not challenge the accuracy of any of the figures. I find the calculations reliable.
- [49] Counsel for L.H. calculated how much L.H. paid in excess of his child support obligations for each month, based on this Guidelines income of the previous year. He submits that L.H. paid in excess of \$32,749.80 from March 2019 to October 2021. I will round this to \$32,750. Counsel for K.H. in her submissions did not challenge this calculation.
- [50] Therefore, I find L.H. has overpaid \$32,750 in child support from March 2019 to October 2021. He is entitled to the return of this amount from the trust funds. Conclusion on Distribution of Trust Funds
- [51] As a starting point, the \$120,000 should be divided equally. L.H. owes K.H. \$25,000 for spousal support, and \$42,000 for the debt to H's mother, which was taken from the total proceeds of sale of the family home. K.H. owes L.H. \$32,750 for the overpayments in child support.
- [52] The \$120,000 in trust should be distributed as follows: · \$94,250 to K.H. (\$60,000 plus \$25,000 plus \$42,000 minus \$32,750); and · \$25,750 to L.H. (\$60,000 minus \$25,000 minus \$42,000 plus \$32,750). Division of Pensions
- [53] The parties agree any increase in L.H.'s work pension from October 1, 2007 to March 1, 2019 will be divided equally pursuant to Part 6 of the FLA.
- [54] The parties agree any increase in both parties' Canada Pension Plans for the same time period will be divided equally pursuant to Part 6 of the FLA. Child Support and Parenting Arrangements
- [55] The parties agree L.H. is to pay child support to K.H. for two children pursuant to the FLA based on his Guidelines income of \$71,656.
- [56] L.H. agrees to provide to K.H. every year on May 1st his income tax return and child support should be adjusted effective July 1st of each year if needed.
- [57] The parties agree K.H. is to have primary care of the children. On weekends where L.H. works day shifts before and after the weekend, L.H. is to have the children from Friday at 4:30 p.m. to Sunday at 7:00 p.m. On weekends where L.H. works afternoon shifts before and after the weekend, L.H. is to have the children from Saturday at 12:00 p.m. and will bring them to school on Monday. On weekends where L.H. is changing from day shift to afternoon shift, L.H. is to have the children from Friday at 4:30 p.m. and will bring them to school on Monday. On weekends where L.H. is changing from afternoon shift to day shift, L.H. is to have the children from Saturday at 12:00 p.m. to Sunday at 7:00 p.m.

[58] The parents are joint guardians of the children. The parties will share equally all of the s. 41 parental responsibilities for the children under s. 40(2) of the FLA as follows:

1. In the event of the death of a guardian, the surviving guardian will be the only guardian of the children;
2. Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the children;
3. Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
4. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
5. In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the children will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the child, under s. 49 of the FLA; and
6. Each guardian will have the right to obtain information concerning the children directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party caregivers.

[59] The parties will:

- a) put the best interests of the children before their own interests;
- b) encourage the children to have a good relationship with the other parent and speak to the children about the other parent and that parent's partner in a positive and respectful manner; and
- c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the children.

[60] The parties will not:

- a) question the children about the other parent or time spent with the other parent beyond simple conversational questions;
- b) discuss with the children any inappropriate adult, court or legal matters; or
- c) blame, criticize or disparage the other parent to the children. Divorce and Name Change

- [61] The parties agree on a divorce. I am satisfied the requirements have been met as the parties have lived separate and apart for more than one year, and on the evidence, there is no possibility of reconciliation. Reasonable arrangements have been made for the support of the children. Subject to s. 12 of the DA, the parties are divorced from each other, the divorce to take effect on the 31st day after the date of this order.
- [62] As I have ordered the divorce, K.H.'s name should be changed to her maiden name as she has requested: s. 5 of Name Act, R.S.B.C. 1996, c. 328.

Conclusion

[63] The Court makes the following orders:

1. The \$120,000 in trust should be distributed as follows: · \$94,250 to K.H; and · \$25,750 to L.H;
2. The parties' pensions are divided as stated above;
3. Child support, parenting arrangements and conduct orders are made as stated above;
4. The parties are divorced from each other, the divorce to take effect on the 31st day after the date of this order; and
5. K.H.'s name is changed to her maiden name.

[64] K.H. has been substantially successful on the issues of the unequal division of the child support arrears and spousal support. L.H. has been substantially successful on the issue of the overpayments of child support. In my view, success has been divided. My preliminary view is each party should bear its own costs. If either party wishes to make different submissions on costs, they are to contact the registry within 30 days of this ruling to set a hearing date. "Chan J."

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