

CANADA / JUDGMENT

Kennedy v. Kennedy

2024 BCSC 310

COURT

Supreme Court of British Columbia

DECIDED

23 February 2024

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2024 BCSC 310 Kennedy v. Kennedy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kennedy v. Kennedy,

2024 BCSC 310

Date: 20240223

Docket: 61917

Registry: Kamloops

Between:

Susan Kennedy

Claimant

And

Craig Edward Kennedy

Respondent

Before: The Honourable Justice B. Smith

Corrected Judgment: The Reasons for Judgment were corrected

at paragraphs 34 and 86 on March 7, 2024

Corrigendum to Reasons for Judgment

Counsel for the Claimant:

R. Lammers

Agent for the Respondent:

N. Wahoski

Counsel for the Proposed Respondents

E. Casselman

Place and Date of Hearing:

Kamloops, B.C.

February 2, 2024

Place and Date of Judgment:

Kamloops, B.C.

February 23, 2024

INTRODUCTION

- [1] This is a family law case. The claimant applies for a number of orders.
- [2] Throughout these reasons, I will refer to the individual proposed respondents Joan Smallwood as "Joan", Sonya Campbell as "Sonya" and King Campbell as "King"; and the corporate respondent, Kencam Consulting Limited as "Kencam". I do so for purposes of clarity only, and mean no disrespect to anyone.

ORDERS SOUGHT

Order to add parties as respondents

- [3] The claimant applies for an order adding Joan, Sonya, King and Kencam (collectively, the "Proposed Respondents") as respondents. The respondent takes no position. The Proposed Respondents are opposed. I grant the claimant's application.

Order to amend the style of cause

- [4] The claimant applies for an order amending the style of cause to add the Proposed Respondents. The respondent takes no position. The Proposed Respondents are opposed. I grant the claimant's application.

Order to permit filing of an Amended Notice of Family Claim

- [5] The claimant applies for an order permitting the filing of an Amended Notice of Family Claim. The respondent takes no position. The Proposed Respondents are opposed. I grant the claimant's application.

Interim order that the respondent pay child support

- [6] The claimant seeks an interim order for retroactive and prospective child support for R.S.K. The respondent agrees to pay child support for R.S.K., but for a lesser amount than the claimant wants him to pay. The proposed respondents take no position. I grant the claimant's application, but for less than the amount claimed.

Interim order that the respondent pay spousal support

- [7] The claimant seeks an interim order for retroactive and prospective spousal support. The respondent is opposed. The Proposed Respondents take no position. I grant the claimant's application, but for less than the amount claimed.

Order imputing income to the respondent

- [8] The claimant seeks an order imputing income to the respondent. The respondent is opposed. The Proposed Respondents take no position. I grant the claimant's application and impute income to the respondent, but at lower than the amount requested.

Order for a fine

- [9] The claimant seeks an order for a fine. The respondent is opposed. The Proposed Respondents take no position. I dismiss the claimant's application.

Order for costs, increased costs or double costs

- [10] The claimant seeks an order that the respondent pay costs, increased costs or double costs. The respondent is opposed. The Proposed Respondents take no position. I defer making an order as to costs.

FACTUAL BACKGROUND

The Parties

- [11] The claimant is 54 years old. She lives and works in Williams Lake, British Columbia, as a base supervisor for a regional airline. The respondent is also 54 years old. He lives and works in Salmon Arm, British Columbia, and is self-employed as a field safety advisor in logging and forestry.

The Relationship

- [12] The parties had a twenty-six-year relationship. They began cohabitating in 1996, married in 1997 and separated on September 22, 2022. Their marriage was largely traditional, in which the claimant stayed out of the workforce for the majority of the time in order to raise the parties' four children.

The Children

- [13] The parties have four children. Three remain children of the marriage within the meaning of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA]. R.S.K. is 18 years old and a full-time student at university in Alberta. The other two children are full-time university students in British Columbia.

The Proposed Respondents

- [14] Joan is a bookkeeper who lives in Enderby. Sonya is a registered agrologist and lives in Salmon Arm. King is of unknown occupation and lives in Salmon Arm. Joan and Sonya are sisters. King is married to Sonya. The respondent is close friends with all three.
- [15] Kencam is a British Columbia company incorporated on February 9, 2023. Joan and Sonya are its sole shareholders and directors.

The History of the Proceedings

- [16] The parties participated in a Judicial Case Conference ("JCC") in June 2023. They were ordered to produce their List of Documents. There were no other orders.
- [17] The claimant's Notice of Application was filed on October 31, 2023. The respondent's Application Response was filed on December 1, 2023. The Proposed Respondents' Application Response was filed on December 6, 2023. The matter was before the court on December 18, 2023, but was adjourned.

The Alleged Scheme to Hide the Respondent's Income and Assets

Claimant's Position

- [18] The claimant asserts Joan and Sonya hold their entire interest in Kencam in trust for the respondent, and that all the Proposed Respondents hold money, accounts and assets in trust for the respondent, for the purpose of defeating the claimant's claims for property division and support.
- [19] In the claimant's Notice of Application, she describes the alleged scheme to hide the respondent's income and assets as follows:
35. Craig, Joan, Sonya and King all entered into an agreement that they would work together to hide Craig's income and assets during the course of this family law case, from Susan.
36. The scheme involved the incorporation of KenCam. Joan and Sonya are the only shareholders and directors of KenCam, when in fact, the entirety of KenCam is beneficially owned by Craig alone.

37. Prior to the parties' separation, Craig operated a sole proprietorship business known as "Kennedy Forest and Safety" which is a safety compliance service provided to remote service locations such as logging sites and the like. Craig also provides services relating to consulting with First Nations, and providing other consultation services relating to the forestry business.
38. While operating Kennedy Forrest and Safety as a sole proprietor, Craig typically earned about \$250,000/year net. This is the amount he agreed to in the Agreement.
39. After Craig and Susan's separation, Craig has now alleged that he is "just an employee" to KenCam, and that he has no control over his wage, hours of work and so on. He now alleges that his income is only \$85,000-\$92,000 per year and has indicated this as such on his filed financial statement, filed herein on June 19, 2023.
40. The name "KenCam" is a combination of the names Kennedy and Campbell.
41. Joan is the bookkeeper for KenCam. She performs regular accounting duties with respect to the business including reviewing invoicing and banking. Joan reports weekly to Craig about matters relating to KenCam, including providing him information about bank balances, tax issues, and financial transactions. Joan seeks directions from Craig as to all day-to-day decisions made with respect to KenCam.
42. Neither Sonya nor Joan make independent decisions about KenCam - only Craig does this. Craig is the sole directing mind of KenCam.
43. Joan, Sonya and King each hold money, accounts and assets in trust for Craig and/or KenCam.
44. Craig continues to perform the same duties as a KenCam employee, attending to the same contracts as he did when he was a proprietor of Kennedy Forest and Safety. Craig uses the same client list now, as he did when he was a proprietor of Kennedy Safety. Nothing has changed in how Craig does business.
45. The scheme was revealed to Susan when she learned that she learned that [reproduced as written] continued to have access to Craig's email account, and when she read the emails between Craig and the other proposed respondents.
46. The details of the scheme are well laid out in the communications between Craig and the proposed respondents.
47. KenCam, Sonya, Joan and King all hold income and assets in trust for Craig, and Susan seeks to impute personal income and assets to Craig as a result.

Respondents' Position

- [20] The respondent denies there is any scheme to hide his income and assets. The respondent submits he is legitimately employed by KenCam and has no ownership position in the company.

Position of the Proposed Respondents

- [21] The Proposed Respondents also deny there is any scheme to hide the respondent's income and assets. They too submit the respondent is legitimately employed by KenCam and has no ownership position in the company.
- [22] The Proposed Respondents submit they formed KenCam as part of implementing what they perceived to be a good business opportunity, which had the potential for making them money at little or no risk.

The Emails

- [23] The claimant's supporting affidavit exhibits a number of emails between the respondent, Joan, Sonya, King and others. Most of the emails are between the respondent and Joan and Sonya, or some combination of the three. King is a party to only a few of them.
- [24] The emails mostly concern the establishment of Kencam, and its operations. The claimant obtained the emails by accessing the respondent's email account with the password, which had previously been saved on her phone. She was able to do so because respondent apparently did not change the password after he and the claimant separated.

Claimant's Position

- [25] The claimant submits the emails are probative of the existence or otherwise of the alleged scheme to hide the respondent's income and assets.

Respondent's Position

- [26] The respondent submits the claimant's possession of the emails, including any alleged to be subject to solicitor-client privilege, evidences only a breach of his privacy, and nothing more.

Position of the Proposed Respondents

- [27] The Proposed Respondents submit the emails were improperly obtained and are subject to solicitor-client privilege.

Specific Emails

- [28] On Wednesday, January 18, 2023 at 8:38 a.m., Joan sent an email to Sonya, King and the respondent, with a copy to someone called Don Smallwood ("Email #1"):

Good morning,

Don and I talked about the business venture. We have a few more questions and maybe Craig, you can ask your lawyer for the answers.

1. Can Sue have her lawyer check into our business and see that it is not at arms length and come after us as well for trying to "hide" your income and assets?
2. What questions would Sue's lawyer have if Craig went from earning almost \$200K per year to now earning \$85K
3. I think that we need to get a secure separation agreement in place first, before we proceed.
4. How much Liability Insurance do you have? Would we, as a company, need to look into the liability insurance as well. If Craig was sued, they would most likely sue the company he worked for as well.
5. What would the share structure look like? 50/50 is not good but 99/1 or 75/25 something like that.

These are just a couple of questions.

Craig - we can set up a payroll account with your business number and start you on payroll but, it might be good to wait until we have some [of] the above answered.

Also, I need the phone number from that lady at CRA, please. I would like to get that ball rolling.

Cheers,

[29] On Wednesday, January 18, 2023 at 8:57 a.m. King replied to Email #1, and sent an email to Joan, with a copy to Sonya, and the respondent ("Email #2"):

Hi All

Good questions, we had a similar discussion yesterday with respect to the business ownership and other details. I disagree with your reference to "hide".

The point is to be setting up a solid business structure for a variety [of] reasons some of which include lower taxes, building assets, less liability in LTD company, the fact Craig is moving south to set up a new life and career. There are a variety of reasons to have his own company rather than sole proprietor, as you know.

Possibly a new stand alone company is best rather than transitioning Medicine Match to KenCam.

The consumer proposal people did mention that divorce proceedings can take precedence over some matters, so as you pointed out, it would be best to have that sorted out first to know where it all stands.

I do find it odd that her lawyer is not proceeding with any claims or movement of this forward to a conclusion and I wonder if it has to do with having several months go by with not much for alimony payments, and they see that to their advantage.

Craig, your lawyer should be advising you on next steps, and I know you have a letter off to him, so hopefully he provides good advice and then sends what is required to her. I think the offers you have made to her are to your advantage as a sign of good faith to get this resolved.

When Craig and I and Sonya chatted the other day, we recognized the insurance needs and the fact none of us have the energy for another frivolous and unnecessary suite of any kind in our lives.

There are professionals with more experience than me in this, and if Craig needs more experienced advice, it is out there and available from someone.

[30] On Monday, January 23, 2023 at 12:35 p.m. the respondent sent an email to King, with a copy to Joan and Sonya ("Email #3"):

Good morning

Found out a few things about liability insurance for limited companies.

The new company would hold the insurance I have now (general liability and errors and omissions).

I as a Registered Forest Professional, would be added to the companies policy instead of me having it personally.

Hub said it's unlikely that a spouse could ever go after a company that an employee works for. I will check into that through a lawyer.

I think it makes most sense to have a lawyer set the new company up in Salmon Arm, Enderby etc instead of Williams Lake. I would like to avoid Williams Lake moving forward as I'm starting over in the Okanagan.

Any suggestions?

[31] On Monday, January 23, 2023 at 2:02 p.m. Joan sent an email to the respondent and King, with a copy to Sonya ("Email #4"):

[Thank]s, Craig;

That is great about the Liability Insurance. Awesome. As for a spouse going after an employee of a company, I believe they can.

Check with your lawyer. Yes, we should have it all done here, in Salmon Arm.

Let's get it [done].

[32] On Monday, January 23, 2023 at 2:10 p.m. the respondent replied to Email #4, and sent an email to Joan, with a copy to King and Sonya ("Email #5"):

Thanks Joan

[I] meant the spouse going after the company the employee works for. I wasn't clear on that lol.

Cheers,

[33] On Thursday, June 8, 2023 at 4:00 p.m. Joan sent an email to the respondent, with a copy to Sonya ("Email #6"):

Craig and Sonya,

I am just home. I have attached a printout, with notes on the bank account for you, Craig. This is your account but, Sonya and I put everything in our name to protect you. If you have access to the account, I think that will break the barrier that we are attempting to create.

It is all your money. So, what I have thought might work for you is this; I will send you a print out every Friday of the bank for that week.

I hope that is a fair compromise.

We have the Source deductions in the amount of \$2,396.88 will be coming out on the 15th. This will reduce the balance to \$3,212.91. You will have a paycheque as well on Friday in the amount of \$2,625.10. This will leave a balance of \$587.81. I am still owed \$2,000.00 and the automatic payments will be coming out as well. Plus, we have GST at the end of the month.

Cheers,

[34] As is evident from the foregoing, Joan's and Sonya's involvement in Kencam appears significant. King's involvement is less clear, but contrary to the submission of counsel for the Proposed Respondents, it does not appear to be limited simply to being married to Sonya.

DISCUSSION

Adding Parties

[35] At any stage of a family law case, the court may order that a person be named as an additional party to the proceedings if their participation is necessary to ensure that all matters in the case may be adjudicated on: Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules]: Rule 8-2(7)(b). The court may also order that a person be named as an additional party if there may exist between that person and any other named party, a question or issue relating to any relief claimed in the case or the subject matter of the case, that in the opinion of the court it would be just and convenient to determine as between the person and the named party: Rule 8-2(7)(c).

[36] In *Taherkhani v. Este*, 2020 BCSC 101, at paras. 31-33, Justice Giaschi discussed the interpretation of R. 8-2(7)(b) and (c):

[3 Rule 8-2(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR] governs the addition of parties to a family matter. It provides:

- (7) At any stage of a family law case, the court, on application by any person, may, subject to subrule (9),
 - (a) order that a person cease to be named as a party if it is not appropriate or necessary for that person to be named as a party,
 - (b) order that a person be named as an additional party or be named as a party in substitution for another named party if
 - (i) that person ought to have been named as a party, or
 - (ii) that person's participation in the family law case is necessary to ensure that all matters in the family law case may be adjudicated on, and
 - (c) order that a person be named as an additional party if there may exist, between the person and any other person who is named as a party to the family law case, a question or issue relating to or connected with
 - (i) any relief claimed in the family law case, or
 - (ii) the subject matter of the family law case

that, in the opinion of the court, it would be just and convenient to determine as between the person and the other person who is named as a party.

[32] Rule 8-2(7) of the SCFR is almost identical to R. 6-2(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR]. In *Alexis v. Duncan*, 2015 BCCA 135, the Court of Appeal addressed the proper test for the addition of a party under the SCCR.

[15] Rule 6-2(7)(b) is concerned with remedying defects in the proceedings as they stood prior to the application to add a party. It has a narrow application. Under R. 6-2(7)(b) the court must decide if the person ought to have been joined as a party or the person's participation in the proceeding is necessary to ensure that all matters may be effectually adjudicated: see *Enterprise Realty Ltd. v. Barnes Lake Cattle Co. Ltd.* (1979), 13 B.C.L.R. 293 (C.A.). The discretion to add a party under R. 6-2(7)(b) exists if one of the conditions in subsections (i) and (ii) is established: *Enterprise Realty Ltd.* at 296. However, "if neither of the prerequisite conditions is established then there is no discretion in the chambers Judge and he must refuse the application": *Enterprise Realty Ltd.* at 296.

[16] The predecessor to R. 6-2(7)(c) was added to the Rules in 1980 shortly after and presumably to counter the narrow interpretation adopted in *Enterprise Realty Ltd.* I note that the broad interpretation considered but rejected in *Enterprise Realty Ltd.* by this Court was "that parties should be added if, after balancing the interests of all the parties, existing and prospective, it is just and convenient to do so": *Enterprise Realty Ltd.* at 296.

- [17] Under R. 6-2(7)(c) the court can order a person be added as a party if there exists, between the person sought to be added and any party to the proceeding, "a question or issue relating to or connected with the relief claimed in the proceeding or the subject matter of the proceeding" and, "if in the opinion of the court, it would be just and convenient to do so" (emphasis added). The decision as to whether to add a party under R. 6-2(7)(c) is discretionary. It is up to the presiding judge to determine whether or not joinder of the new defendant is just and convenient in any particular case: see e.g., *Letvad v. Fenwick*, 2000 BCCA 630. It cannot be said with any assurance that a claim for professional negligence will automatically be joined: see *Zymtech Development Inc. v. Sport Central Enterprises Ltd. et al.*, 2004 BCSC 309.
- [33] In *Lantzius v Lantzius*, 2015 BCSC 2066, at para. 26, Justice Kelleher noted that R. 8-2(7)(b) and (c) should be given a broad purposive interpretation. I accept R. 8-2(7)(c) is to be given a broad interpretation but that is not the case with R. 8-2(7)(b). As indicated in para. 15 of the above quotation from Alexis, R. 6-2(7)(b) of the SCCR is concerned with remedying defects in a proceeding and has a narrow application. The same must be so with R. 8-2(b) which is framed almost identically.
- [37] I am satisfied the claimant has met the threshold for adding the Proposed Respondents to the proceedings.
- [38] The first part of the test under Rule 8-2(7)(c) is whether, between the person sought to be added and any party to the proceedings, there exists a question or issue relating to or connected with the relief claimed in the proceedings or the subject matter of the proceedings.
- [39] The involvement of each of the Proposed Respondents in events leading to the formation of Kencam, and its subsequent operations, are questions related to relief claimed in the proceedings, as well as the subject matter of the proceedings, namely the respondent's income and assets, and his child support and spousal support obligations.
- [40] The second part of the test under Rule 8-2(7)(c) is whether it is "just and convenient" to add the proposed parties to the proceedings.
- [41] The proper determination of the claimant's and the respondent's interests in the resolution of the issues in this case is important. The participation of each Proposed Respondent is necessary to ensure that all matters relating to the respondent's income and assets, and his child support and spousal support obligations, are adjudicated on.
- [42] The determination of the existence or otherwise of the alleged scheme is important in the interests of the administration of justice. There are some emails between Sonya, Joan and someone at a law firm ("Impugned Emails"). The respondent is also included in some of the Impugned Emails. Having regard to the position of the Proposed Respondents, for the purposes of determining this application, I have not considered the Impugned Emails in reaching my decision about whether to add the Proposed Respondents as parties to the

proceedings. Nor have I considered whether waiver, or the future crimes and fraud exception might apply to the Impugned Emails.

- [43] There are a few other emails between the respondent and someone else at the same law firm ("Other Impugned Emails"). Neither the respondent nor the law firm have asserted solicitor-client privilege over the Other Impugned Emails.
- [44] I find the Other Impugned Emails are not subject to solicitor-client privilege.
- [45] I have considered all the emails other than the Impugned Emails in reaching my decision about whether to permit the claimant to add the Proposed Respondents as parties to the proceedings. While I acknowledge the Proposed Respondents deny there is any scheme to hide the respondent's income and assets, I find the emails between the respondent and the Proposed Respondents, other than the Impugned Emails, can reasonably be interpreted otherwise. I agree with the claimant that they are arguably probative of the existence or otherwise of the alleged scheme to hide the respondent's income and assets. I am satisfied, based on the evidence on the application, that the issue of the existence or otherwise of the alleged scheme is not frivolous.
- [46] The proceedings are at an early stage. Adding the Proposed Respondents now will further the object of Rule 1-3(1)(b), namely to secure the just, speedy and inexpensive determination of every family law case on its merits. It is suitable to try all issues pertaining to the respondent's income and assets together. I do not foresee any complications arising. If the claimant is unsuccessful in establishing the existence of the alleged scheme, or the involvement of any of the Proposed Respondents in it, she faces very significant costs consequences.

Child Support and Spousal Support

- [47] There are no existing court orders in place for the payment of either child support or spousal support.
- [48] The respondent has paid some irregular, interim lump-sum support since separation, but has not paid anything since July 2023.
- [49] Since separation, the claimant has been solely responsible for the maintenance of the former family home, and has paid mortgage, tax and utility expenses. The respondent has not contributed to any of these expenses in lieu of paying support.
- [50] The respondent filed a Financial Statement on June 19, 2023, which the claimant submits is incomplete. It does not include his 2020 T1 General return or any Notice of Assessment.

The Cohabitation Agreement

[51] The parties signed a cohabitation agreement on October 12, 2021 (the "Cohabitation Agreement"). Both had prior independent legal advice. The Cohabitation Agreement strongly favours the claimant.

Claimant's Position

[52] The claimant submits the Cohabitation Agreement is an agreement within the meaning of s. 6 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The claimant submits the provisions of the Cohabitation Agreement are binding and enforceable against the respondent.

Respondent's Position

[53] The respondent submits the provisions of the Cohabitation Agreement are not enforceable and that it should be set aside. The respondent submits the Cohabitation Agreement is unconscionable in that it provides for him to pay the claimant monthly child support of \$3,339 until the children are 24-years-old and spousal support at the high end of the range, ignoring all discretionary factors; and allocates all equity in the former matrimonial residence to the claimant, and all debt to him.

[54] The respondent submits that although he received independent legal advice prior to signing the Cohabitation Agreement, he signed it under duress.

Conclusion

[55] I decline to decide the question of the respondent's support obligations based on the provisions of the Cohabitation Agreement, because in my view it is in the interests of justice that the issues raised by the respondent concerning its enforceability should be determined at trial, not on an application for an interim support order.

The claimant's income

[56] It is undisputed that the claimant's income for 2023 was \$40,000, based on her complete Financial Statements, filed June 19, 2023.

The respondent's income

Claimant's Position

[57] The claimant submits the respondent's past annual income has historically been around \$250,000.

[58] The claimant submits the court should impute annual income to the respondent in the range of \$175,000 to \$200,000.

- [59] Based on imputed income of \$175,000, this would result in a monthly payment by the respondent to the claimant of \$1,551 for child support, and between \$2,833 (low) to \$3,335 (mid) to \$3,840 (high) for spousal support, for a total payment of between \$4,384 and \$5,391.
- [60] Based on imputed income of \$200,000, this would result in a monthly payment by the respondent to the claimant of \$1,746 for child support, and between \$3,456 (low) to \$4,013 (mid) to \$4,578 (high) for spousal support, for a total payment of between \$5,202 and \$6,324.
- [61] The claimant submits that spousal support should be payable at the high end of the range, pursuant to the provisions of the Cohabitation Agreement, and because the parties were involved in a 26-year traditional relationship, in which she stayed out of the workforce for many years in order to raise her four children. She says she did not work at all outside the home between 2005 and 2018, when she commenced part-time employment with her current employer.

Respondent's Position

- [62] The respondent submits that he has never had annual income of \$250,000 and his income tax documentation establishes his income in 2021 was \$146,731.63; and in 2022 was \$98,757.14.
- [63] The respondent submits his historical income was greater than his post-separation income, because his business lost several lucrative client contracts and he was affected negatively by the breakdown in his relationship with the claimant.
- [64] The respondent denies he is intentionally under-employed, because he remains employed in the same line of work as before.
- [65] The respondent submits that any income imputed to him should be no more than \$135,000, which he says is reasonable, and takes account of year-to-year fluctuations in his income.
- [66] Based on imputed income of \$135,000, this would result in a monthly payment by the respondent to the claimant of \$1,237 for child support, and \$2,305 for spousal support, for a total payment of \$3,542.

Conclusion

- [67] I am not satisfied the respondent's annual income should be imputed at \$250,000. The respondent's financial disclosure to date suggests his annual income is much less.
- [68] The Cohabitation Agreement is the only evidence to support the claimant's assertion that the respondent has historical annual income of \$250,000.
- [69] The respondent's income in 2020 is presumably known to him, but is not yet known to the claimant, because the respondent has yet to provide financial disclosure. The respondent's income tax returns for 2021 and 2022 in the T1 General form under the heading "Total Income" indicate the respondent's annual income in those two years was much less than

\$250,000. The respondent's income was \$146,731.63 in 2021 and \$98,757.14 in 2022. I find there is reason to believe, based on the email communications between the respondent and the Proposed Respondents, that his income may be higher than he claims. I recognize that further information about the email communications has yet to be developed.

- [70] I have considered s. 19(1) of the Federal Child Support Guidelines and the respondent's Application Response material concerning the amount of family debt, the legal liability for payment of that debt, and the provisions of s. 12.1 of the Spousal Support Advisory Guidelines in regards to the court's consideration of compelling financial circumstances at the interim stage. I have considered the submission of the respondent's agent that an imputed income of \$135,000 would be reasonable. I am also mindful that interim proceedings provide "rough justice" at best: *Hama v. Werbes*, 1999 Can LII 5828 (BCSC) at para. 7.
- [71] I find it is appropriate to impute the respondent's annual income at \$135,000. I make that determination based upon the submission of the respondent's agent, and because I consider it fair, having regard to the respondent's historical income; and reasonable, due to the respondent's failure to provide financial disclosure for 2020, his claimed income in 2021 and 2022, and the issues which have been raised regarding the alleged scheme to hide the respondent's income and assets.

Child Support

- [72] At this time, the claimant only seeks interim child support for R.S.K., retroactive to October 2023.
- [73] The respondent will pay the claimant monthly child support of \$1,237. The payments will begin on March 15, 2024. The respondent will also pay retroactive child support in the amount of \$1,237 per month for each of the four months of November 2023, December 2023, January 2024 and February 2024, for a total of \$4,948.

Spousal Support

- [74] The claimant seeks interim spousal support, retroactive to October 2023.
- [75] The respondent will pay the claimant monthly spousal support of \$2,305. The payments will begin on March 15, 2024. The respondent will also pay retroactive spousal support in the amount of \$2,305 per month for each of the four months of November 2023, December 2023, January 2024 and February 2024, for a total of \$9,220.

Fine

- [76] I am not persuaded that the respondent's failure to complete his financial disclosure is so egregious that it is appropriate to order him to pay a fine. In reaching this conclusion, I have considered s. 213 of the FLA and the principles identified by Justice Punnett in *J.D.G v. J.J.V.*, 2013 BCSC 1274.

[77] I acknowledge the claimant's position that the respondent's financial disclosure is at best incomplete, and at worst an attempted fraud on the court. While the respondent has yet to complete his financial disclosure, particularly in regards to the 2020 taxation year, he has nevertheless already provided significant other financial disclosure. While an attempted fraud on the court is obviously a very serious matter, whether that has occurred has yet to be determined.

ORDERS

[78] I make the following orders:

Adding Parties

[79] Pursuant to Rule 8-2(7), the following persons are added as parties to the action:

- Joan Smallwood;
- Sonya Maren Campbell;
- King Campbell; and
- Kencam Consulting Limited.

[80] The style of cause is amended as follows:

Claimant:

Susan Kennedy

Respondents:

Craig Edward Kennedy, Joan Smallwood, Sonya Maren Campbell, King Campbell, and KenCam Consulting Limited

[81] The claimant is permitted to file an Amended Notice of Family Claim, in the form set out in Appendix "A" to the claimant's Notice of Application filed October 31, 2023.

Child Support

[82] I make the following child support orders.

Residency and Income

[83] The claimant is a resident of British Columbia with a 2023 annual income of \$40,000.

[84] The respondent is a resident of British Columbia with a 2023 annual income of \$135,000.

Retroactive Child Support

[85] The respondent will pay the claimant the sum of \$1,237 per month for the support of R.S.K., born August 9, 2005, in each of the months of November 2023, December 2023, January 2024 and February 2024, for a total of \$4,948, no later than July 15, 2024.

Prospective Child Support

[86] The respondent will pay the claimant the sum of \$1,237 per month for the support of R.S.K., born August 9, 2005, commencing March 15, 2024, and continuing monthly until agreement of the parties or further order of this court.

Spousal Support

[87] I make the following spousal support orders:

Retroactive Spousal Support

[88] The respondent will pay the claimant the sum of \$2,305 per month for spousal support, in each of the months of November 2023, December 2023, January 2024 and February 2024, for a total of \$9,220, no later than July 15, 2024.

Prospective Spousal Support

[89] The respondent will pay the claimant the sum of \$2,305 per month for spousal support, commencing March 15, 2024, and continuing monthly until agreement of the parties or further order of this court.

Imputed Income

[90] I impute the respondent's annual income at \$135,000.

COSTS

[91] During the hearing of the application, I heard various references by the respondent's agent and by counsel for the Proposed Respondents to settlement offers and discussions. In the circumstances, I leave it to the parties to try and reach an agreement as to costs, failing which they will exchange written submissions and file them with the court, no later than 30 days after the date of these reasons, for my determination as to costs.

[92] I defer making any order as to costs.

"B. Smith J."

B. SMITH J.

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Prepared on 26 October 2026 · Esheria