
CANADA / JUDGMENT

Kooner v. Kooner

2015 BCSC 1880

COURT

Supreme Court of British Columbia

DECIDED

15 October 2015

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2015 BCSC 1880 Kooner v. Kooner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kooner v. Kooner,

2015 BCSC 1880

Date: 20151015

Docket: E40944

Registry: New Westminster

Between:

Ranjit Singh Kooner

Claimant

And

Harjit Kaur a.k.a. Harjit Kaur Kooner

Respondent

And

Mohinderjit Kaur Kooner and Jaswinder Singh Kooner

Respondents by Counterclaim

Before: The Honourable Madam Justice Bruce

Reasons for Judgment

Counsel for the Claimant, Ranjit Singh Kooner:

Pir Indar Sahota

Counsel for the Respondent, Harjit Kaur a.k.a. Harjit Kaur Kooner:

Parmjit S. Virk

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 22-26, 2014

New Westminster, B.C.

September 28 and 29, 2015

Place and Date of Judgment:

New Westminster, B.C.

October 15, 2015

INTRODUCTION

- [1] This is an action for divorce, child support and extraordinary expenses, as well as spousal support, pursuant to the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the Family Law Act, S.B.C. 2011, c. 25. Mrs. Kooner seeks retroactive and prospective orders regarding child support and a retroactive order for spousal support. The parties have one child who resides with Mrs. Kooner. The child was born on June 7, 2008 and is now seven years old.
- [2] Although Mr. Kooner originally sought joint guardianship, joint custody and access, he conceded these issues in favour of Mrs. Kooner during the trial. Mr. Kooner no longer seeks guardianship or parenting time with the child and has consented to an order for sole guardianship and sole custody in favour of Mrs. Kooner. I am also satisfied that the evidence supports a finding that it is in the best interests of the child that Mrs. Kooner have sole custody and guardianship. I thus order that Mrs. Kooner have sole custody and guardianship of the child pursuant to s. 16(1) of the Divorce Act and s. 51(1) of the Family Law Act. Further, I make no order regarding access or parenting time in favour of Mr. Kooner by consent. Mr. Kooner is also not opposed to an order that Mrs. Kooner have unrestricted authority to travel with the child without his consent. I thus make an order that Mrs. Kooner may travel with the child at any time and without restriction or the need to obtain Mr. Kooner's consent.
- [3] There is no dispute that the parties have lived separate and apart since August 7, 2011. There has been no reconciliation since that date and there is no prospect for reconciliation. There is no evidence of collusion or condonation regarding the grounds for divorce. Accordingly, I grant the parties a divorce pursuant to ss. 8 and 12(1) of the Divorce Act. This order shall take effect 31 days from the date of the order.

- [4] The primary issues in dispute relate to the Guidelines income of Mr. Kooner for the purpose of child support and whether income should be imputed to either or both parties for the purpose of calculating spousal support. Mr. Kooner also disputes some of the extraordinary expenses claimed by Mrs. Kooner. The claim for retroactive child support and spousal support relates, in part, to periods of separation in excess of 90 days that preceded the final separation in August 2011. Lastly, the parties dispute Mrs. Kooner's claim for an order that the child become the irrevocable beneficiary under Mr. Kooner's life insurance policy.

MATERIAL FACTS

- [5] Mrs. Kooner came to Canada in 2002 as a student. She eventually obtained employment and became a permanent resident. In February 2005, Mrs. Kooner travelled to India to be married to Mr. Kooner. The wedding took place in the Punjab, in the village of Galib, on February 7, 2005. Mrs. Kooner's sister was married the day before, on February 6, 2005, to Mr. Kooner's brother. Mr. Kooner remained in India until Mrs. Kooner was able to sponsor his immigration to Canada. Mrs. Kooner's sister also remained in India until her immigration to Canada could be sponsored by Mr. Kooner's brother.
- [6] Mrs. Kooner returned to Canada in April 2005. Mr. Kooner's mother and brother were already permanent residents in Canada, living in British Columbia. Mr. Kooner's brother lived in a basement suite of the home in which their mother resided. Within a few months of her return to Canada, Mrs. Kooner began living with her new mother-in-law and her brother-in-law. She held two jobs to earn sufficient monies to sponsor her parents and Mr. Kooner as permanent residents to Canada.
- [7] Mrs. Kooner provided income tax returns for the years 2002, 2003, 2005 and 2007; however, she was unable to obtain her tax returns for 2004 and 2006. Her income varied from a low of \$2,775 in 2002 to a high of \$40,952 in 2005. Although counsel for Mr. Kooner argued that Mrs. Kooner's annual income had to be at least \$45,000 to sponsor her parents and him to Canada, there is no evidence to support this assertion. Mr. Kooner was unaware of Mrs. Kooner's actual income during this period.
- [8] Both Mrs. Kooner's parents came to Canada under her sponsorship, but it is not clear when this occurred. After an initial refusal by Citizenship and Immigration Canada, Mr. Kooner eventually was able to immigrate to Canada and he arrived on April 11, 2007. He immediately began living with his wife, brother and mother in their home. Mrs. Kooner's sister was successfully sponsored by Mr. Kooner's brother and she arrived in February 2008. At that time the two brothers and the two sisters were residing in the same residence with Mr. Kooner's mother.
- [9] Mr. Kooner immediately began working for Mr. Bassi as an electrical helper. Mr. Bassi was related to Mr. Kooner but the nature of the family relationship is unclear. Bassi Electrical paid Mr. Kooner by the hour and in 2007 he reported income of \$23,506. Mrs. Kooner worked in 2007 as a security guard and she reported net income of \$18,645. Mr. Kooner also

worked for Bassi Electrical in 2008 and he reported income that year of \$30,950. Mrs. Kooner continued to work as a security guard in 2008; however, events in that year led to a decline in her income. She reported an income of only \$9,742 for 2008.

- [10] In mid-2007 Mrs. Kooner became pregnant. It was a difficult pregnancy that led to hospital visits for bleeding and a direction from her doctor to take precautions for her health, including complete bed rest. On April 2, 2008, life became complicated for the parties. Mrs. Kooner's sister had a falling out with Mr. Kooner's brother over an alleged assault by Mr. Kooner's brother and she decided to leave the family home and reside with her parents. Mrs. Kooner left with her sister and began living with her parents. Mrs. Kooner continued to reside with her parents until the child was born on June 7, 2008.
- [11] Just prior to the trial of the assault charges against Mr. Kooner's brother in August 2008, both sisters and their respective husbands reconciled and Mrs. Kooner and her sister returned to the family home. Mr. Kooner did not pay spousal support or child support during the parties' separation between April 2, 2008 and August 10, 2008 when they reconciled. When Mrs. Kooner returned to the family home she was on maternity leave and the child was two months old.
- [12] The parties next separated on October 20, 2008 as a result of a dispute between Mrs. Kooner and Mr. Kooner. Mrs. Kooner and the child, as well as her sister, left the family home and resided with their parents. Their second reconciliation occurred on December 27, 2008. Shortly thereafter on January 3, 2009, the parties separated for a third time and on this occasion they did not reconcile until December 5, 2009. Mr. Kooner did not pay child support or spousal support during the second and third separations.
- [13] During the parties' third separation in November 2009, Mr. Bassi passed away and Mr. Kooner was left without employment. However, immediately after Mr. Bassi's death Mr. Kooner began working for his brother's company, Kooner Electrical Ltd., as an electrician's helper. Mr. Kooner reported income of \$33,758 in 2009. In 2009, Mrs. Kooner worked as a security guard and reported an annual income of \$12,225. In late 2008 and throughout 2009, Mrs. Kooner attended Vancouver Community College taking English as a Second Language courses.
- [14] The parties again separated on January 5, 2010 and did not reconcile until May 22, 2011. Mr. Kooner did not pay child support or spousal support during the period of separation. In 2010, Mr. Kooner's reported income was \$39,352 and Mrs. Kooner's reported income was \$15,226. In 2011, Mr. Kooner's reported income was \$42,948 and Mrs. Kooner's reported income was \$14,182. She continued to work as a security guard throughout 2010 and 2011, but there is no evidence concerning her hours of work and, in particular, whether she worked full time.
- [15] The parties' last reconciliation lasted until August 7, 2011 at which time they separated permanently. Mr. Kooner did not pay child support or spousal support during 2011 or 2012. On October 1, 2013, he commenced paying child support of \$392 per month. Mr. Kooner has

continued to pay child support in this amount up to the date of trial. In 2012, Mr. Kooner's reported income was \$32,103 and Mrs. Kooner's reported income was \$29,385. In this year she trained to become a homecare worker and continues to work in this capacity. In 2013, Mr. Kooner's reported income was \$37,647 and Mrs. Kooner's reported income was \$36,383. In 2014, Mrs. Kooner's reported income was \$28,666 and Mr. Kooner's reported income was \$32,814.

- [16] Mrs. Kooner did not produce evidence of her income for the first nine months of 2015. Mr. Kooner's paystubs for this period indicate a total income of \$24,588. Taking an average of the monthly income reported to date, his annual salary for 2015 would be \$36,882.
- [17] There is some concern about the accuracy of Mr. Kooner's reported income based on the evidence before the court. Mr. Kooner works for his brother in a non-arm's length relationship. There is an onus resting on Mr. Kooner to establish that the earnings he has reported to Revenue Canada are an accurate reflection of his total income. Mr. Kooner's brother did not testify and in evidence is a letter from Mr. Kooner's brother dated January 11, 2011 that indicates Mr. Kooner earns more than his reported income. While in 2010 Mr. Kooner reported income of \$39,352, his brother appears to pay Mr. Kooner about \$4,200 per month, or \$50,400 annually. In addition, in April 2013, when applying for life insurance, Mr. Kooner disclosed to Industrial Alliance an income of greater than \$40,000 per year.

CHILD SUPPORT

- [18] Mr. Kooner accepts that he has an obligation to pay child support prospectively and retroactively during the periods of separation before August 7, 2011. He acknowledges that there was no period of reconciliation 90 days or longer that would have terminated his obligation to pay child support. He has not argued that Mrs. Kooner has delayed in making this claim or for any other reason is barred from claiming retroactive child support for all of the periods of separation commencing in April 2008. The issue in dispute is Mr. Kooner's income during the relevant periods in the past and currently.
- [19] The first two periods of separation occurred in 2008, between April 2008 and August 2008 and between October 2008 and December 2008, for a total period of five months after the child was born. Mr. Kooner's reported income for 2008 was \$30,950. There is no evidence that his earnings from Bassi Electrical are other than as reported to Revenue Canada. As a consequence, I accept that Mr. Kooner's Guidelines income for child support in 2008 was \$30,950. His child support obligation was therefore \$279 per month. For five months Mr. Kooner's total child support obligation would have been \$1,395.

- [20] The third period of separation was between January and December 2009 for a total of 11 months. In 2009, Mr. Kooner's reported income was \$33,758. There is no evidence that leads me to doubt the accuracy of his reported income during 2009 while he worked for Bassi Electrical. Thus I accept Mr. Kooner's Guidelines income for this period is \$33,758. His child support obligation was therefore \$306 per month. For 11 months Mr. Kooner's child support obligation would have been a total of \$3,366.
- [21] The fourth period of separation was between January 2010 and May 2011. For 2010 Mr. Kooner's reported income was \$39,352. There is some doubt about the accuracy of this reported income in light of the letter of Mr. Kooner's brother dated January 11, 2011. It appears that Mr. Kooner was usually earning \$4,200 per month, which could represent a maximum income of \$50,400 annually. There is some monthly fluctuation in Mr. Kooner's income that suggests he would not have earned the maximum represented in this letter; however, in light of Mr. Kooner's reported income in 2011 of close to \$43,000, I find it is reasonable to impute at least that level of income to him for 2010. Accordingly, I find that Mr. Kooner's Guidelines income for 2010 was \$43,000, which results in a child support obligation of \$392 per month. The total child support obligation for the 12 months of 2010 would have been \$4,704.
- [22] The balance of this period of separation is between January 2011 and May 2011, which is a total of five months. In 2011, Mr. Kooner reported an income of close to \$43,000, which corresponds to the imputed income for 2010. There is insufficient evidence to impute any additional income to Mr. Kooner in 2011. Accordingly, for five months in 2011 Mr. Kooner's child support obligation would have been \$392 per month for a total child support obligation of \$1,960.
- [23] The final period of separation occurred on August 7, 2011 and continues to date. No child support was paid until October 1, 2013. For the balance of 2011, I find Mr. Kooner's Guidelines income should reflect the imputed income of \$43,000 and thus he would have continued to pay \$392 per month during the balance of 2011. In total this amount would have been \$1,960.
- [24] Carrying on to 2012, Mr. Kooner's reported income was \$32,103. For the reasons outlined above, Mr. Kooner has not satisfied me that this is an accurate reflection of the income he earns working for his brother in a non-arm's length employment relationship. Accordingly, I find it is reasonable to continue to impute to him an annual income of \$43,000. Thus Mr. Kooner's child support obligation for the 12 months of 2012 would have been \$4,704.
- [25] The evidence also supports an imputation of income to Mr. Kooner in the same amount for 2013, 2014 and 2015. As a consequence, I find Mr. Kooner's child support obligation for January to September 2013 was \$392 per month for a total of \$3,528.
- [26] Accordingly, I order Mr. Kooner to pay \$21,617 for retroactive child support for the past periods of separation up to October 1, 2013, by year as outlined earlier as follows:

2008

\$1,395

2009

\$3,366

2010

\$4,704

January - May 2011

\$1,960

August - December 2011

\$1,960

2012

\$4,704

2013

\$3,528

Total

\$21,617

[27] Turning to ongoing child support, I order Mr. Kooner to pay \$392 per month to Mrs. Kooner on the first day of each month commencing October 1, 2013 and continuing on the first day of each month thereafter until further order of the court. Mr. Kooner shall disclose his income tax return to Mrs. Kooner each year on or before July 1 to determine child support for the next year. Mr. Kooner shall not be entitled to reduce his Guidelines income below \$43,000 without Mrs. Kooner's consent or a further order of this court.

SPOUSAL SUPPORT

[28] Mrs. Kooner claims spousal support during the periods of separation between April 2008 and August 2011 and spousal support up to January 2012. Mr. Kooner argues that spousal support should not be payable for a number of reasons. He argues that income should be imputed to Mrs. Kooner because she has not produced all of her income tax returns; because her income in 2005 was far greater than it is currently without a reasonable explanation; and because when one considers child support there is relatively little difference in their respective incomes. In regard to the final period of separation, Mr. Kooner argues that the short duration of the marriage and the very few months they actually resided together as a couple should result in a finding that there is no obligation to pay spousal support.

- [29] Section 161 of the Family Law Act provides that the court must consider the following objectives when determining entitlement to spousal support:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
 - (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [30] When Mrs. Kooner left the family home in April 2008, she was seven months pregnant with the child. It is apparent that it was a difficult pregnancy. The child was born two months later on June 7, 2008, and thereafter Mrs. Kooner was on maternity leave for one year. Her drastic reduction of income during 2008 and 2009 reflects the onerous task of caring for a newborn without any assistance from Mr. Kooner. I find that Mrs. Kooner was entitled to spousal support during the first year of the child's life to "apportion between the spouses any financial consequences arising from the care of their child". Further, while the child was too young to be placed in school on a regular basis, it was not practical for Mrs. Kooner to return to full-time work given her modest income earning capacity. Accordingly, I find that Mrs. Kooner was entitled to receive spousal support throughout the periods of separation during the balance of 2009 and during the years 2010 and 2011.
- [31] This is a relatively short period of time for the payment of spousal support, which solely reflects the economic disadvantages faced by Mrs. Kooner due to the breakdown of the marriage and her assumption of primary care of the child. While this was clearly a short marriage, spousal support for this limited period is warranted because Mrs. Kooner took on sole responsibility for the child.
- [32] Mr. Kooner does not dispute the application of the Spousal Support Advisory Guidelines in determining spousal support; however, he argues that income should be imputed to Mrs. Kooner. I do not accept Mr. Kooner's argument for a number of reasons.
- [33] First, while Mrs. Kooner appears to have earned an income in excess of \$40,000 in 2005, and possibly 2006, her income earning capacity was limited by the birth of the child commencing in 2008. Thereafter her ability to earn income declined due to the obligation to care for the newborn child and during the child's early years. Second, unlike Mr. Kooner, Mrs. Kooner works for an independent employer in an arm's length relationship. There is no reason to doubt the accuracy of the income her employers reported to Revenue Canada over the years. Indeed, there is no evidence that Mrs. Kooner has made inconsistent statements about her income to cause the court to doubt the veracity of her income tax returns. Lastly, there is no evidence that Mrs. Kooner is purposefully underemployed. She has returned to

school to improve her English language skills and to train as a homecare worker. While there is no evidence as to whether she is working full time or part time, Mr. Kooner has not provided evidence of higher paying employment for which Mrs. Kooner is qualified. Nor is there any evidence that it would be feasible for Mrs. Kooner to increase her hours of work given her childcare responsibilities.

[34] Accordingly, based on the parties' respective incomes, I order the following amounts of spousal support:

1. Between April 2008 and December 2008, the Spousal Support Advisory Guidelines indicate a mid-range of spousal support of \$138 per month based on the parties' respective incomes for that year after considering child support of \$279 per month. Thus for the seven months the parties lived separate and apart, Mr. Kooner is required to pay spousal support of \$966 in total.
2. Between January 2009 and December 2009, spousal support is indicated at a mid-range of \$116 per month based on the parties' respective incomes and after considering a child support amount of \$306. Thus for the 11 months the parties lived separate and apart, Mr. Kooner is obligated to pay \$1,276 in total for spousal support.
3. Between January 2010 and May 22, 2011, spousal support is indicated at a mid-range of \$255 based on the imputed income of \$43,000 for Mr. Kooner and the reported income of Mrs. Kooner and a child support amount of \$392 per month. Thus for the 17 months the parties lived separate and apart, Mr. Kooner is obligated to pay spousal support of \$4,335 in total.
4. Between August 2011 and December 2011, spousal support is indicated at a mid-range of \$255 per month based on the imputed income of \$43,000 for Mr. Kooner and the reported income of Mrs. Kooner and a child support amount of \$392. Thus for this five month period, Mr. Kooner is obligated to pay spousal support of \$1,275 in total.

[35] Accordingly, in regard to retroactive spousal support, I order Mr. Kooner to pay a total of \$7,852 as follows:

2008

\$ 966

2009

\$1,276

January 2010 - May 2011

\$4,335

August - December 2011

\$1,275

Total

\$7,852

EXTRAORDINARY EXPENSES

A. Cost Sharing

- [36] In regard to future cost sharing of extraordinary expenses, I have found that currently Mr. Kooner's Guidelines income is \$43,000. Mrs. Kooner's income is \$28,666. Accordingly, I order Mr. Kooner to pay a proportionate share of the extraordinary expenses at 60% and Mrs. Kooner is ordered to pay 40%. Further, I order that each year on or before July 1, the parties shall exchange their income tax returns to determine their proportionate share of extraordinary expenses for the next year. Mr. Kooner shall not be entitled to reduce his Guidelines income below \$43,000 unless Mrs. Kooner consents or he obtains a court order varying his Guidelines income as set out above.
- [37] In regard to past cost sharing of extraordinary expenses, Mrs. Kooner does not claim any expenses prior to 2012. A comparison of the parties' incomes for the years 2012, 2013, 2014 and 2015 indicates a range of proportionate shares for extraordinary expenses from a low of 40/60% to a high of 46/54%. The average cost sharing for these four years is 42/58%. I find it is thus reasonable to order Mr. Kooner to pay 58% of the cost of extraordinary expenses incurred by Mrs. Kooner.

B. Identification of Extraordinary Expenses

- [38] Mr. Kooner does not object to sharing the costs of the child's medical and dental expenses, including the child's cost of B.C. Medical premiums, prescription medications and dental work. Mr. Kooner does not object to sharing the costs of school supplies and field trips; however, he objects to paying the cost of a private school and the cost of the bus transportation to the school. Mr. Kooner argues that the parties' respective incomes are not sufficient to cover the cost of a private school. He maintains that good public schools are available near the child's home and Mrs. Kooner has not demonstrated a special need for the child to attend private school.
- [39] In my view, the cost of private school is beyond the means of the parties. Mr. Kooner has an imputed income of \$43,000 and Mrs. Kooner earns less than \$30,000 per year. The cost of private school, including bus transportation, is more than \$2,000 per year. After paying current and arrears of child support, as well as arrears of spousal support, Mr. Kooner has no ability to pay the additional cost of private school based on his 60% share. Fees, yearly registration, bus transportation and tutoring appear to be in excess of \$3,000 per year.

- [40] I find that it is appropriate to order Mr. Kooner to pay his proportionate share of the child's B.C. Medical premiums, prescription medications, dental expenses, school supplies, apart from clothing, school field trips, and a sport or extracurricular activity in which the child is registered, and any other child-related expense that the parties agree upon from time to time. This order is effective the date of this order for all future extraordinary expenses.
- [41] Mrs. Kooner shall submit a receipt or a cancelled cheque to Mr. Kooner for repayment of the expense within 30 days of incurring the expense. Mr. Kooner shall remit payment to Mrs. Kooner within 7 days of being presented with a receipt or cancelled cheque as proof of payment. If he fails to pay the expense within 7 days, Mrs. Kooner is entitled to receive an additional 10% of the expense for each day it is not paid up to a maximum of 100% of the cost.
- [42] Turning to the claim for past expenses, Mr. Kooner shall pay 58% of the child's cost of B.C. Medical premiums for the years 2012 to 2014 inclusive. Mr. Kooner shall pay his 58% share of the expenses incurred for school supplies in the amount of \$549.92, medications in the amount of \$979.54, and dental fees of \$624.50. If the parties are unable to calculate these amounts, I shall determine the issue upon application by either party.

LIFE INSURANCE

- [43] Mr. Kooner currently owns a life insurance policy with a face amount of \$575,000. The beneficiary under the policy appears to be his mother. Pursuant to s. 170(e) of the Family Law Act, the court may order a spouse who has a contract of life insurance to designate a child or a spouse as an irrevocable beneficiary or for a designated period in appropriate circumstances. Mrs. Kooner asks the court to make such an order designating the parties' child as a beneficiary under Mr. Kooner's life insurance policy.
- [44] Mr. Kooner objects on the ground there is no evidence that security for the payment of child support is required.
- [45] In my view, the court may make an order under s. 170(e) of the Family Law Act even if there is no evidence of any delinquency regarding the payment of child support. However, there must be a reasonable connection between Mr. Kooner's obligations under the Act to support the child and such an order before the court may exercise its discretion to make an order under s. 170(e). The court must consider the best interests of the child but there must be a rationale for such an order based on the evidence before the court.
- [46] In this case it took considerable time for Mr. Kooner to recognize an obligation to pay child support. The parties separated for the final time in August 2011 and he did not begin paying child support until October 2013. However, since then he has regularly paid child support and is not in arrears except as a result of this order. On the other hand, as a result of this order, Mr. Kooner owes a substantial amount in arrears of child support. He claims to be unable to pay arrears beyond \$150 to \$200 per month in addition to the current child support obligation, and this would cover both child support and spousal support arrears. At this rate

it will take many years for Mr. Kooner to pay off the arrears.

- [47] I find that in these circumstances an order under s. 170(e) of the Act is necessary in the best interests of the child to ensure that if something happens to Mr. Kooner before he repays all of the arrears of child and spousal support, the child has a fund to fall back on. Designating her as a beneficiary safeguards the future financial welfare of the child in light of Mr. Kooner's modest income and the arrears of support that he must pay pursuant to this order.
- [48] Accordingly, I order that Mr. Kooner forthwith designate the child as the sole beneficiary under his life insurance plan until she is 19 years of age; that he not reduce the face amount of the life insurance below \$100,000 without the consent of Mrs. Kooner or an order of the court; and that he pay the monthly premiums on the life insurance policy. If the policy is cancelled for any reason, Mr. Kooner shall forthwith replace the policy with one of equivalent value and designate the child as the irrevocable sole beneficiary. He shall then continue to pay the premiums on the replacement policy.

PAYMENT OF ARREARS

- [49] In light of my findings concerning Mr. Kooner's Guidelines income, the amounts owing for spousal and child support arrears, balanced with the needs of the child and Mrs. Kooner, I order Mr. Kooner to pay \$200 per month on the outstanding arrears of child and spousal support and extraordinary expenses, in addition to his child support obligation each month and his ongoing obligation for extraordinary expenses, commencing the first day of November 2015 and continuing on the first day of each month thereafter until the arrears are paid in full.

COSTS

- [50] The matter of costs is in dispute. Mr. Kooner argues that an offer to settle may impact my determination regarding costs. He also maintains that Mrs. Kooner's actions at the commencement of the trial, which necessitated a half day adjournment, and counsel's lengthy cross-examination of him, increased the time required for the trial unnecessarily. Mrs. Kooner argues that she should be awarded costs if she is substantially successful in this action. Further, she maintains that Mr. Kooner caused the trial to take longer by waiting until day three of the trial to withdraw his claim for joint guardianship and joint custody, as well as parenting time with the child.
- [51] In my view, neither party's conduct unnecessarily increased the time required for the trial. Because the parties were required to transfer the file to Vancouver on the first day of trial due to a shortage of judges in New Westminster, the morning of the first day was substantially taken up with travel to Vancouver. While Mr. Kooner waited three days before withdrawing his contentious claims, his actions saved the court time required to canvass guardianship, custody and parenting time. Lastly, the cross-examination of Mr. Kooner was clearly necessary due to the issues of credibility regarding his income for child support and

spousal support.

- [52] Neither party has been entirely successful in their respective claims. Income has been imputed to Mr. Kooner and Mrs. Kooner's reported income has been accepted by the court as an accurate reflection of her ability to earn income generally. However, the court did not impute income to Mr. Kooner to the level argued by Mrs. Kooner. Retroactive spousal support was granted but not at the level argued by Mrs. Kooner. Extraordinary expenses were granted retroactively and prospectively but the proportionate shares ordered by the court were not as argued by Mrs. Kooner.
- [53] On balance, I find that the relative success of the parties in this action dictates that they share the costs in a disproportionate manner. Mrs. Kooner was successful in part to a greater extent than Mr. Kooner. Therefore, I find it is appropriate in the circumstances to order that Mr. Kooner pay 50% of Mrs. Kooner's taxable costs at Scale B pursuant to Rule 16-1 of the Supreme Court Family Rules.

SUMMARY

[54] In summary, the court makes the following orders:

1. By consent, I order that Mrs. Kooner have sole custody and guardianship of the child pursuant to s. 16(1) of the Divorce Act and s. 51(1) of the Family Law Act. I also order that Mrs. Kooner may travel with the child at any time and without restriction or the need to obtain Mr. Kooner's consent.
2. I grant the parties a divorce pursuant to ss. 8 and 12(1) of the Divorce Act. This order shall take effect 31 days from the date of the order.
3. I order Mr. Kooner to pay \$21,617 for retroactive child support for the past periods of separation up to October 1, 2013.
4. I order Mr. Kooner to pay \$392 per month to Mrs. Kooner for ongoing child support on the first day of each month commencing October 1, 2013, and continuing on the first day of each month thereafter until further order of the court. Mr. Kooner shall disclose his income tax return to Mrs. Kooner each year on or before July 1 to determine child support for the next year. Mr. Kooner shall not be entitled to reduce his Guidelines income below \$43,000 without Mrs. Kooner's consent or a further order of this court.
5. In regard to retroactive spousal support, I order Mr. Kooner to pay a total of \$7,852.
6. In regard to future extraordinary expenses for the child, I order Mr. Kooner to pay a proportionate share of the extraordinary expenses at 60% and Mrs. Kooner is ordered to pay 40%. Further, I order that each year on or before July 1 the parties shall exchange their income tax returns to determine their proportionate share of extraordinary expenses for the next year. Mr. Kooner shall not be entitled to reduce his Guidelines income below \$43,000 unless Mrs. Kooner consents or he obtains a court order varying his Guidelines income as set out above.

7. I order Mr. Kooner to pay his proportionate share of the child's B.C. Medical premiums, prescription medications, dental expenses, school supplies, apart from clothing, school field trips, and a sport or extracurricular activity in which the child is registered, and any other child-related expense that the parties agree upon from time to time. This order is effective the date of this order for all future extraordinary expenses.
8. Mrs. Kooner shall submit a receipt or a cancelled cheque to Mr. Kooner for repayment of the expense within 30 days of incurring the expense. Mr. Kooner shall remit payment to Mrs. Kooner within 7 days of being presented with a receipt or cancelled cheque as proof of payment. If he fails to pay the expense within 7 days, Mrs. Kooner is entitled to receive an additional 10% of the expense for each day it is not paid up to a maximum of 100% of the cost.
9. I order Mr. Kooner to pay 58% of the cost of extraordinary expenses incurred by Mrs. Kooner prior to the trial. In particular, Mr. Kooner shall pay 58% of the child's cost of B.C. Medical premiums for the years 2012 to 2014 inclusive. Mr. Kooner shall pay his 58% share of the expenses incurred for school supplies in the amount of \$549.92, medications in the amount of \$979.54, and dental fees of \$624.50. If the parties are unable to calculate these amounts, I shall determine the issue upon application by either party.
10. I order Mr. Kooner to forthwith designate the child as the sole beneficiary under his life insurance plan until she reaches the age of 19 years; that he not reduce the face amount of the life insurance below \$100,000 without the consent of Mrs. Kooner or an order of the court; and that he pay the monthly premiums on the life insurance policy. If the policy is cancelled for any reason, Mr. Kooner shall forthwith replace the policy with one of equivalent value and designate the child as the irrevocable sole beneficiary. He shall then continue to pay the premiums on the replacement policy.
11. I order Mr. Kooner to pay \$200 per month on the outstanding arrears of child and spousal support and extraordinary expenses, in addition to his child support obligation each month, and in addition to his ongoing obligation for extraordinary expenses, commencing the first day of November 2015, and continuing on the first day of each month thereafter until the arrears are paid in full.
12. I order that Mr. Kooner pay 50% of Mrs. Kooner's taxable costs at Scale B pursuant to Rule 16-1 of the Supreme Court Family Rules.

[55] I remain seized of any issue arising out of this order.

"Bruce J."

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