

CANADA / JUDGMENT

L.B. v. D.F.

2024 BCSC 2027

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Supreme Court of British Columbia

DECIDED

6 November 2024

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2024 BCSC 2027 L.B. v. D.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.B. v. D.F.,

2024 BCSC 2027

Date: 20241106

Docket: E66628

Registry: New Westminster

Between:

L.B.

Claimant

And

D.F.

Respondent

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

Counsel for Claimant:

Z. Vilvang

Counsel for Respondent:

M. Shergill

Place and Date of Trial:

Port Coquitlam, B.C.

July 8-12, 15-19, 23 and 31, and

New Westminster, B.C.

October 2, 2024

Place and Date of Judgment:

New Westminster, B.C.

November 6, 2024

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Introduction

- [1] The most contentious issue between the parties in this family proceeding is parenting arrangements. Child support, spousal support, and the determination and division of family property are also at issue.
- [2] Both parties seek a divorce. The claimant wife, L.B., seeks the majority of parenting time, final decision-making authority for the children, and child and spousal support. The respondent husband, D.F., seeks equal parenting time and final decision-making authority for the children, and opposes L.B.'s claim for spousal support. The parties do not agree on their respective incomes for the purpose of calculating child and spousal support. They do not agree on the appropriate division of family property. Each party seeks an order for costs.
- [3] The emphasis of both parties in their legal submissions was on parenting time and family violence allegations. As will be apparent from these reasons for judgment, I received comparatively little assistance from the parties with respect to the other issues between them.
- [4] To protect the privacy and well-being of the parties' children, particularly given the allegations of family violence made by each party, I will refer to the parties and other witnesses by their first and last initials, and to the children by their first initials only.

Background

- [5] L.B. is employed as a licensed rental property manager. D.F. is employed as an education assistant, and also earns income as a home share provider. D.F. earned rental income from investment properties in the past, but no longer does.
- [6] L.B. and D.F. began dating in July 2016. They started living together in a marriage-like relationship on December 1, 2017. At the time, they were expecting their first child, K, who was born in May 2018. The parties were married in March 2019 and their second child, M, was born in August 2019.
- [7] L.B. has an older child from a previous relationship, G. L.B. does not seek any relief in respect of G.
- [8] The parties separated on October 31, 2022. D.F. remained in the family home, and L.B. moved into rental accommodations. The separation has not been amicable. Ongoing conflict about parenting arrangements has escalated what might otherwise have been a relatively cooperative dissolution of the parties' relationship.

Issues

- [9] The issues to be decided are:
 - a) parenting arrangements;
 - b) child and spousal support;
 - c) division of property; and
 - d) divorce.
- [10] I will consider each issue in turn. Before I do, I will address the credibility of the witnesses.

Credibility

- [11] Credibility and reliability are distinct but related concepts. Credibility refers to whether a witness is telling the truth; on the other hand, reliability relates to the accuracy of testimony and "involves consideration of a witness's ability to accurately observe, recall, and recount the events in issue": *Ford v. Lin*, 2022 BCCA 179 at para. 104.
- [12] I have considered the principles relevant to assessing credibility that are discussed in the frequently cited passages of Justice O'Halloran in *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.), and Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 185-187, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, [2012] S.C.C.A. No. 392. Ultimately, the validity of testimony depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw* at para 186.

- [13] Each party takes issue with the credibility of the other and, to some degree, the credibility of the witnesses called by each party. Assessing credibility and reliability can be difficult in a case such as this, where the strained nature of the parties' relationship is apparent throughout their testimony. In *A.S. v. S.S.*, 2023 BCSC 1077, Justice D. MacDonald observed:
- [47] In family law cases, as in most litigation, each party has distinct interests from the other. In most family law cases emotions are high. The parties tend to assert their own interests and often have trouble making any concessions regarding the other's point of view. Here, I find that both parties exhibited this behaviour.
- [14] I make those same observations and finding in this case. Throughout trial, I had serious doubts about the ability of L.B. and D.F. "to resist the influence of interest to modify [their] recollection" (Bradshaw at para. 186) in their testimony, particularly where their evidence was relevant to parenting arrangements. They are each highly motivated to maximize their own parenting time--something that necessarily comes at the expense of the other's--and I had the strong impression that this influenced the testimony of both L.B. and D.F. at trial.
- [15] The testimony of both L.B. and D.F. appeared to reflect "the human tendency to reconstruct and distort history in a manner that favours a desired outcome" (*Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10), particularly on matters relevant to the parties' relationship and parenting. Throughout their testimony, each was critical of the other's actions and behaviour to a degree that was out of proportion to the various events being described. While I attribute this to the emotionally difficult and highly contentious nature of the parties' dispute, and not to any deliberate attempt to mislead the Court on the part of L.B. or D.F., it nonetheless means I have treated their evidence with caution.
- [16] That said, I do not agree with D.F.'s submission that L.B. was "overtly defensive" and evasive throughout her cross-examination, or that "overreaction, over-exaggeration, selective memory, [and] attempting to deflect are primary characteristics" of her cross-examination evidence. While L.B. was critical of D.F. in many respects, she also readily acknowledged in her testimony that D.F. had some positive attributes as a parent and spouse. In contrast, I found D.F. resistant to identifying any positive attributes on the part of L.B.
- [17] I also reject D.F.'s submission that there was a "significant difference" between L.B.'s demeanour and responsiveness in direct examination and on cross-examination. I found L.B. to be a forthright, cooperative witness who was responsive and maintained composure throughout what I would characterize as an unnecessarily aggressive and confrontational cross-examination.
- [18] There is one area in which I found L.B.'s testimony to be more reliable than that of D.F. In general, I found that L.B.'s evidence about financial matters was more detailed and precise than that of D.F., who often appeared somewhat confused or unable to clearly follow questions. This was more apparent on cross-examination, but also occurred in his direct examination. In comparison, L.B. had excellent recall of financial and property matters, and demonstrated good familiarity with and understanding of the various banking records and

other financial documentation in evidence as exhibits. The same cannot be said for D.F. His evidence about the parties' financial affair before separation, and his own finances post-separation, was overall more general and high-level than that of L.B. For these reasons, where there is conflicting evidence about financial and property matters, I find the testimony of L.B. more reliable than that of D.F.

- [19] Various friends and family members also testified at trial. L.B. called several friends and her parents. D.F. called his mother, stepfather, sister, and a friend. I disagree with each party's critiques of the evidence of these witnesses. The non-party witnesses provided objective and balanced evidence, and I found all of them to be unbiased, credible, and reliable in their testimony.

Parenting Arrangements

Legal Principles

- [20] The parties' submissions on the issue of parenting arrangements focused on the Family Law Act, S.B.C. 2011, c. 25 [FLA]. I will therefore frame my analysis of parenting arrangements using the framework established under the FLA.
- [21] The sole consideration in deciding parenting arrangements is the best interests of the children, taking into account all of their needs and circumstances, including the factors prescribed by s. 37 of the FLA. Where family violence is an alleged consideration under s. 37, as it is in this case, one must have reference to s. 38 of the FLA. Also relevant is the broad definition of "family violence" under s.1 of the FLA.
- [22] In *M.W. v. N.L.M.W.*, 2021 BCSC 1273, Justice Veenstra provides a helpful overview of the approach when considering family violence allegations:
- [105] While the provisions as to family violence in the DA came into effect only recently, the FLA provisions have been in effect for several years. Given that the provisions in each statute are similar (although not identical), the jurisprudence that has developed under the FLA is of assistance in interpreting both.
- [106] As noted in *R.W. v. P.C.*, 2017 BCSC 998 at para. 76:
- [76] In cases where family violence is alleged, it is the obligation of the court to assess the evidence provided and determine whether or not it had indeed occurred and its extent. It is insufficient for one party to merely allege that she was the subject of abuse. The court must consider the evidence provided by both parties as well as other witnesses to determine what had taken place over the course of the marriage.
- [107] Thus, the proper approach is to first assess the allegations of family violence, and then to consider whether any family violence found to have occurred "substantially affects", or at least is relevant to, one of the factors listed in DA s. 16 or FLA s. 37.

- [108] The court should also be careful not to label conduct as "family violence" where there is no evidence the child has suffered any physical or emotional harm as a result of the parents' conduct. The provisions of the FLA relating to family violence are intended to address a serious social issue and to protect children and spouses from actual harm or danger: C.L.M. v. M.J.S., 2017 BCSC 799 at para. 365.
- [109] The best interests of a child are promoted and protected by making orders that contemplate the real and substantial risks to their safety, security and well-being, in respect of both the possibility of a risk apprehended by the court actually existing or becoming manifest, and the risk of potential harm to a child as a result, and the risk of possibly harming a child's interests by any order that might be too broad: N.D.T. v. T.F.T., 2016 BCSC 134 at para. 103.

The Parties' Positions

- [23] L.B. seeks an order that she and D.F. are the guardians of the children under s. 39(1) of the FLA. D.F. says this order is not necessary because there is already a court order to that effect, made May 31, 2023, at the parties' Judicial Case Conference, which remains in force. I agree with D.F. and decline to make an order regarding guardianship. If there was not an existing order, I would have granted the order sought by L.B.
- [24] L.B. and D.F. have very different views on the appropriate parenting time and parenting decision-making arrangements for their children. L.B. seeks the majority of parenting time, with D.F. having the children from Thursday after school until Tuesday before school on alternating weeks. She also seeks final decision-making authority for the children. D.F. seeks equal parenting time, and final decision-making authority. Each alleges family violence on the part of the other as a relevant consideration in determining these issues.

Best Interests of the Children

- [25] In assessing and deciding parenting time and responsibilities, I have considered only what is in the best interests of the children with reference to the factors set out in ss. 37 and 38 of the FLA. For the reasons set out below, I find that it is in the best interests of the children for the parties to equally share parenting time and decision-making responsibility.

Family Violence

- [26] I will first address the factor of alleged family violence, since emphasis was placed on this factor in the evidence and submissions about the children's best interests.
- [27] Each party alleges the other is responsible for family violence. While I summarize only some of this evidence below, I have carefully reviewed all of the evidence in considering the allegations of family violence and, having done so, I make no finding of family violence as that term is defined in the FLA. If I am wrong, and there has been family violence within the meaning of the FLA, I find that (i) there is no evidence that it has impacted the children's safety, security or well-being (FLA s. 37(2)(g)), and (ii) neither parent is impaired in their

ability to care for the children and meet their needs (FLA s. 37(2)(h)).

- [28] L.B. alleges verbal and financial abuse directed at her. While I accept much of L.B.'s evidence about the events described at trial, I find that they do not constitute abuse.
- [29] The basis for the allegation of financial abuse is not clear from L.B.'s submissions or from the evidence before me. I therefore find that there has not been financial abuse of L.B.
- [30] In terms of alleged verbal abuse of L.B., she testified that, during their marriage, D.F. would often express anger toward her in the presence of the children. D.F. denies this, but agrees he would at times get "frustrated". Regardless of whether the emotion is described as anger or frustration, I am satisfied on the evidence that the parties would on occasion have disagreements and be unhappy with each other. I am unable on the evidence to make findings as to how often this behaviour occurred and how often it may have been witnessed by the children. I therefore find the evidence does not establish that this behaviour rose to the level required to come within the definition of family violence in the FLA.
- [31] Two of L.B.'s friends testified that they witnessed D.F. appear angry and speak to L.B. in a sharp tone on one occasion at a birthday party. I accept these witnesses' versions of the events, but do not find their evidence establishes family violence.
- [32] L.B. also alleges family violence directed to the children. She makes a general allegation that D.F. would yell at the children to the point that they would run to their rooms and hide under the covers. I accept that this happened on occasion, but the evidence is insufficient for me to make any findings about when, how often, and in what context this behaviour would occur. This evidence is insufficient to establish family violence within the meaning of the FLA.
- [33] L.B. also relies on two specific incidents that were the focus of her evidence and submissions on family violence. The first occurred on January 12, 2021. On that day, L.B. says D.F. called M a "little fucker" and told her that she would no longer have a father because he was going to die. L.B. explained that she was so troubled by D.F.'s words that she booked a counselling session the following day. D.F. denies this. He has no specific memory of this event, but says he imagines L.B.'s evidence is exaggerated and embellished, and that he cannot see himself using that kind of language with M.
- [34] I accept L.B.'s evidence about what D.F. said on this one occasion. She has a clear memory of the event, which was troubling for her. However, the evidence is insufficient for me to make any finding about what prompted the comments, or whether M actually heard and understood them.
- [35] The second incident of alleged family violence occurred on October 10, 2022, shortly before the parties separated. L.B. and the children had returned from a weekend away with her extended family. The children were tired and cranky from a long car ride. L.B. sent them into the house and stayed outside to clean up the car, because one of the children has been sick on the drive. L.B.'s evidence is that when she returned to the house, she overheard D.F.

threaten to throw K out the window. She says she feared for K's safety, and took both the children out for dinner so D.F. could cool down.

- [36] D.F. recalls this occasion but has a different version of events. He explained that he was making dinner when L.B. and the children arrived home. The children's crankiness escalated into loud tantrums. D.F. says he grew frustrated with the situation, including that L.B. had stayed outside rather than helping with the children since he was in the middle of cooking. He says that in frustration, he muttered the comment about throwing K out the window to himself. This was obviously spoken loudly enough for L.B. to overhear, but D.F. says there is no way that K could have overheard because she was on the other side of the room and both children were loudly crying and carrying on.
- [37] I accept that, on that one occasion, D.F. said something about throwing K out the window. However, I do not accept L.B.'s submission that this was a serious threat. I do not find that D.F. made the comment in seriousness or that he had any intention of actually carrying through on his words. Rather, I find that the words were said to express D.F.'s degree of frustration in the moment. I also find it very unlikely that K or M could have overheard the comment given the state of the children at the time.
- [38] There is no evidence of D.F. making comments of a nature similar to those described above on any other occasion. While his comments were not appropriate, particularly if overheard by the children, I do not accept L.B.'s submission that they constitute family violence as defined in the FLA. I am particularly mindful that there is no evidence that the children have suffered any physical or emotional harm as a result of D.F.'s conduct, other than L.B.'s own perception that his conduct has been harmful. For the reasons stated in my discussion of credibility, I do not consider that type of evidence to be reliable in this case.
- [39] Overall, and considering the totality of the evidence, including but not limited to the evidence summarized above, I find that the evidence before me does not establish family violence as defined in the FLA. The evidence falls far short of the type of behaviour and events that gave the Court "serious concerns" in *D.A.B. v. C.A.S.*, 2020 BCSC 807, relied on by L.B. on this issue.
- [40] D.F. also advances allegations of family violence on the part of L.B. I find that none of the examples D.F. identified as family violence toward the children fall outside the range of acceptable parenting decisions--for example, not responding right away when a child calls out at night. D.F.'s allegation of family violence directed at himself involves L.B.'s various reports to the police, MCFD, and D.F.'s employer. While I find these reports were not warranted or reasonable, I reject D.F.'s submission that they are examples of family violence. I therefore find that the evidence does not support a finding that L.B.'s conduct constitutes family violence as defined in the FLA.

- [41] Nonetheless, if any of the events alleged by L.B. or D.F. constitute family violence, which is not my finding but is alleged by the parties, I conclude that they do not impact the children's safety, security, or well-being (as contemplated in FLA s. 37(2)(g)), and neither party is impaired in their ability to care for the children and meet the children's needs (as contemplated in FLA s. 37(2)(h)). I reach this conclusion having considered the totality of the evidence and the factors set out in s. 38 of the FLA.
- [42] The evidence does not allow me to make any findings about frequency of alleged family violence, other than the specific occasions described above, or the extent to which the children may have been exposed to family violence not directed at them. The nature and seriousness of the alleged family violence are at the low end of the spectrum. In terms of recency, the family violence alleged against D.F. occurred prior to the parties' separation. The parties' circumstances are much different today than they were at the time of the behaviour alleged by L.B.: the children are older, the parties are no longer living together in an unhappy marriage, and the pandemic restrictions that limited the social and family supports available to the parties during their marriage have ended.
- [43] The evidence does not satisfy me that either party has proved harm to the children's physical, psychological, and emotional safety, security, and well-being caused by the alleged family violence. The evidence does not establish a pattern of coercive and controlling behaviour on the part of either party. There is no evidence that the children fear for their safety when they are with either parent.
- [44] To the extent L.B. or D.F. fears for the children's safety when they are with the other parent, I find that is not a reasonably held fear based on the evidence before me. I acknowledge that L.B. says she has an ongoing, present concern about D.F.'s anger. However, I find there is no basis in the evidence for that concern. L.B. has had very little opportunity to observe D.F. interact with the children since separation. With one exception, all of the witnesses testified that they have observed nothing of concern in terms of D.F.'s temperament and parenting. I accept their evidence in that regard. One witness, a friend of L.B., described witnessing an incident where D.F. yelled at M outside K's school. I accept as reasonable D.F.'s explanation of this incident being prompted by concern for M running into traffic.
- [45] In determining the best interests of the children, I have considered L.B.'s evidence that, on occasion, D.F. was angry and yelled at his home share clients. I have also considered evidence from L.B. and her friends about occasions when D.F. has allegedly shown anger. I conclude that much of the difference between the parties' evidence on these topics is due in large part to their very different manner of expressing and perceiving emotions. While there is evidence that D.F. has had angry (in L.B.'s words) or frustrated (in D.F.'s words) outbursts on occasion, I am satisfied on the evidence that these were discrete instances and do not demonstrate a concerning pattern of behaviour.

- [46] Finally, while he denies L.B.'s allegations, D.F. has in any event taken steps to address her concerns by taking parenting courses and attending counselling. While L.B. questions whether D.F. fully completed at least one of the courses, I accept D.F.'s evidence that he did so.
- [47] In summary, having considered the allegations of family violence and the evidence in this case, I find that neither parent is impaired in their ability to care for the children and neither parent presents a risk to the children's safety, security, and well-being. I find there is no significant impact of family violence as it relates to the best interests of the children.

Other Factors

- [48] I find that the children's health and emotional well-being will be best-served by L.B. and D.F. sharing equally in parenting time. While the parties are each quite critical of the other's approach to usual parenting tasks such as bedtime, potty training, meals, and discipline, I find that these critiques reflect nothing more than a significant difference in their respective parenting philosophies, which are at opposite ends of the wide spectrum of acceptable choices. The parties must set aside their own views about the approach taken by the other and accept that neither of them has a superior parenting ability or style. It is clear from the testimony of the parties and the non-party witnesses that L.B. and D.F. each bring different but equally valuable strengths to the parent-child relationship. I am satisfied that this is a situation where the children's health and well-being will be best served by maximizing their time with both parents.
- [49] On the record before me, I am unable to consider the children's views. As of the date of trial, K was six and M was four. Unsurprisingly, neither child gave evidence at trial. I do not have the benefit of a report prepared under either s. 211 or s. 202 of the FLA. There was limited testimony from the parties and other witnesses about the children's views, and the little evidence I heard is not sufficiently reliable to make any findings in that regard.
- [50] I find that the nature and strength of the relationships between the children and significant persons in their lives also weighs in favour of equal parenting time. The evidence shows that the children have close, loving, healthy relationships with each of their parents. The evidence also reveals that both parents have a strong support network of people who love and are close with the children.
- [51] I am not persuaded that the history of the children's care supports anything other than an equal division of parenting time. Each party has the view that they did more than the other when it came to childcare during their marriage. I find this evidence to be of relatively little help in determining the best interests of the children in this case, given their young ages at the date of separation and the time that has since passed. In any event, the parties' Agreed Statement of Facts states that they were both caregivers of the children prior to separation.

- [52] While L.B. has been primarily responsible for care of the children since separation, this has been her unilateral choice and strongly opposed by D.F., who has always sought equal parenting time.
- [53] Since separation, the parties have reported each other to the police on more than one occasion for matters relating to parenting time. Based on the evidence before me, I find that none of the police reports were reasonable or warranted in the circumstances.
- [54] For example, on one occasion, D.F. registered the children in swimming lessons without L.B.'s agreement, and then picked them up from daycare and took them to the lessons without telling L.B. in advance. D.F. emailed L.B. from the pool and told her when the children would be ready for pickup. L.B. reported the situation to the police, who attended at the pool and questioned D.F. L.B. explained she was concerned about D.F. withholding the children. I find this was not a reasonable concern in the circumstances. D.F. had communicated the children's location to L.B., and his email expressly contemplated that she would pick up the children. D.F. had not withheld the children on other occasions. There is no evidence to suggest it was necessary to involve the police.
- [55] As another example, D.F. involved the police on one occasion when L.B. refused to let him have parenting time, requesting a "wellness check". Similarly, there is nothing in the evidence to suggest this was a reasonably held concern or that it was necessary to involve the police.
- [56] I find it is not in the children's best interests for the parties to expose them to unnecessary police involvement. I urge the parties to carefully consider the impact this type of behaviour has on the children. However, because both L.B. and D.F. have engaged in unnecessary reporting to the police and others, this is a neutral factor in my consideration of parenting arrangements.
- [57] I find the parties are equally able to provide the resources and stability that the children require. I do not accept D.F.'s submission that L.B.'s residence is inadequate and unstable. L.B.'s current home is small and she shares a bedroom with the children, but there is no evidence to suggest that the living arrangement is in any way detrimental to them.
- [58] I find both parties are equally able to exercise their parental responsibilities. Since the parties' separation, L.B. and D.F. have each been involved parents who are able to manage all childcare responsibilities without issue during their respective parenting time. D.F. was critical of the degree to which L.B. relies on one of her close friends to help care for the children during her parenting time. I do not share this concern. To the contrary, the fact that each party has the benefit of an established friend and family support network during their respective parenting time helps provide greater stability and emotional support in the children's lives. There is no question this is in the children's best interests.

- [59] It is clearly in the best interests of the children that L.B. and D.F. co-parent in a respectful and collaborative manner. Based on their testimony, I am satisfied that they have the ability to do so, despite the challenges they have experienced since separation.
- [60] Finally, the only proceeding relevant to the children's security and well-being is this dispute. Various non-party witnesses testified about the negative impact of the ongoing litigation between L.B. and D.F. on the children's emotional well-being, and I accept that evidence. I urge the parties to consider the detrimental impact of their ongoing dispute on their children. They are loving parents, and I know they want the best for K and M. I am confident that with the stress of this trial behind them, they will be better able to focus on improving their co-parenting relationship. This will be to the significant benefit of K and M.

Conclusions on Parenting Time and Responsibilities

- [61] I preface my conclusions on parenting time and decision-making with a comment about the parties' firmly held views on the superiority of their own respective parenting choices. As I have observed, neither of the parties' views are right or wrong; they are both in the range of acceptable parenting styles. I strongly urge the parties to reflect on the following comments of Justice Goepel in *K.D.P. v. A.R.K. aka R.K.*, 2011 BCSC 1085, which I find apt in this case:
- [1] No parents are perfect. All have flaws of one kind or another. If families stay together, except in those rare circumstances in which a child is found to be in need of protection, the state and the courts allow imperfect parents to raise their children as best they can. The children, in most cases, are no worse for wear for the experience.
- [2] If families separate, however, and issues of custody and access arise, in the guise of determining the best interests of the child, a parent's flaws of character and conduct are put under a microscope. In such circumstances, care must be taken not to lose sight of the strengths that a party brings to the challenge of raising a child.
- [62] Fortunately, this is not one of "those rare circumstances in which a child is found to be in need of protection": *K.D.P.* at para. 1. After considering the best interests of the children pursuant to ss. 37 and 38 of the FLA, and in light of all the evidence, including but not limited to the evidence summarized above, I find that it is in the best interests of the children that L.B. and D.F. equally share parenting time and decision-making responsibility.

Schedule

- [63] Deciding the parenting time schedule that is in the best interests of the children is more difficult.
- [64] There is some evidence from both parties that the children, and K in particular, struggle with transitions, which weighs in favour of a week-on, week-off schedule. That said, the children are still relatively young, and a week away from either parent is significant at their age. This would be particularly significant on the week when the children are with D.F. (as when they are with L.B., they will presumably still have the opportunity to see and engage

with D.F. to some degree, since he works at their school). For that reason, I conclude that a 2-2-5-5 schedule is more appropriate, subject to the ability of the parties to agree to a different schedule now or in the future if they believe that is, or becomes, better for the children. The new parenting time arrangement is to begin no later than two weeks after the release of this decision.

- [65] To minimize the potential for conflict between the parties, unless the parties agree otherwise, transitions of the children from the care of one parent to the other shall occur as follows. On school days, the transitions of parenting time will occur at the children's school. When school is not in session, unless the parties agree otherwise, the parent whose parenting time is ending will drop the children off at the other parent's home. If it becomes necessary to pick up a child early from school or from care arrangements during non-school days--for example, due to illness--pick-up is the responsibility of the parent who will have the child in their home that night.
- [66] Both parties seek specific exceptions to the usual schedule, for holidays and school breaks. I am of the view that it is in the interests of the children to minimize disruptions to the usual parenting schedule as much as possible. However, I recognize that it is important to the parties that certain special occasions are shared equally and that they each, on occasion, may wish to travel with the children for extended periods, which will not be possible with strict adherence to the new parenting schedule. I therefore order the following exceptions to the parenting schedule:
- a) School Breaks: In even years, L.B. shall have parenting time for the first half of Spring Break and Christmas break, and D.F. shall have parenting time for the second half of Spring break and Christmas break. In odd years, D.F. shall have parenting time for the first half of Spring Break and Christmas break, and L.B. shall have parenting time for the second half of Spring break and Christmas break.
 - b) Easter: if Good Friday and Easter Monday do not fall during the children's school Spring Break, the parties shall equally share parenting time for the period commencing after school on the Thursday before Good Friday and ending at school drop off on the Tuesday following Easter Monday. The parent who has regularly scheduled parenting time on the Thursday before Good Friday shall have parenting time for the first half of this period. The transition from the care of one parent to the other during this period will occur on Saturday at 7:30 pm.
 - c) Summer: During Summer break from school, each party shall have an uninterrupted two-week period of parenting time. If the parties cannot agree on when their respective two-week periods will occur, L.B.'s two-week period will commence on the first Saturday in July, and D.F.'s two-week period will commence on the first Saturday in August.
 - d) Special Occasions: D.F. will have parenting time with the children from 9:00 am to 7:00 pm on Father's Day, if it does not fall during his regular parenting time. L.B. will have parenting time with the children from 9:00 am to 7:00 pm on Mother's Day, if it does not fall during her

regular parenting time. If the parties' respective birthdays do not fall during their regular parenting time, they will have parenting time with the children from after school to 7:30 pm if the birthday falls on a school day, or from 10:00 am to 7:00 pm if the birthday falls on a non-school day.

- [67] The above parenting schedule orders are subject to the ability of the parties to agree to any changes they mutually decide are in the best interests of the children. I encourage L.B. and D.F. to consider all reasonable requests for modifications to the usual schedule to accommodate events and other special occasions.

Parental Responsibilities

- [68] The parties agree that parental responsibilities should be shared pursuant to the Joyce Model, but disagree about final decision-making authority. L.B. and D.F. each seek an order that they are entitled to make the final decision if the parties cannot agree on a parental decision.
- [69] I do not find it appropriate to grant either party final decision-making in respect of all parenting responsibilities. Given their history to date, I anticipate that such an arrangement will inevitably lead to the party without final authority bringing repeated court applications for review of decisions. I find this is the likely outcome regardless of which parent has final decision-making authority. Repeatedly resorting to court for resolution of the parties' parenting disagreements is not in the best interests of the children.
- [70] L.B. and D.F. have many years of co-parenting ahead of them. It is in the children's best interests that L.B. and D.F. learn to communicate and make decisions about the children in a respectful, collaborative manner, without constant resort to the courts. Based on the evidence and my observations of L.B. and D.F. at trial, I am confident they have the ability to do so, particularly with the highly contentious issue of parenting time now resolved.
- [71] L.B. seeks an order that the parties engage a parenting coordinator; D.F. opposes this as an unnecessary cost. I find that the children will benefit from a mechanism for resolution of disagreements between L.B. and D.F. that does not involve resorting to court applications. As a result, I order that the parties shall engage a parenting coordinator. If L.B. and D.F. cannot agree on a decision regarding the children after making best efforts, the parenting coordinator will, after consultation with the parties, decide the matter. The parties will make best efforts to resolve parenting disagreements without resort to the parenting coordinator, and will not request a decision from the parenting coordinator until they have exhausted all efforts to resolve their disagreement.
- [72] In granting final decision-making authority to a parenting coordinator, I expect that the parties will be encouraged to cooperate and compromise on issues regarding parenting, which is of course in the children's best interests.

- [73] To assist them in more respectful and productive communication, I agree with L.B.'s proposal that the parties utilize and share the cost of Our Family Wizard or a similar parenting app. L.B. and D.F. shall use Our Family Wizard or, if they agree, a comparable tool for their primary communication method, with the cost to be shared equally by the parties.
- [74] Also to facilitate improved communication, I agree with D.F.'s proposal that the parties resume co-parenting counselling with the counsellor they had previously been using, with the cost to be shared equally by the parties. The parties shall attend regular co-parenting counselling sessions, at a frequency recommended by the counsellor, for a period of one year or until the counsellor recommends sessions can be discontinued, whichever is earlier.

Conduct Orders

- [75] Each party seeks conduct orders. I conclude the following orders are appropriate in this case, to minimize the potential for future conflict by establishing certain boundaries and behavioural expectations:
- a) Neither party shall attend the residence of the other unless for the purpose of exchanging the children under the parenting schedule or unless otherwise invited in writing.
 - b) The parties will:
 - i. put the best interests of the children before their own interests;
 - ii. encourage the children to have a good relationship with the other parent and speak to the children about the other parent in a positive and respectful manner; and
 - iii. make a real effort to maintain polite, respectful communication with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.
 - c) The parties will not:
 - i. question the children about the other parent or time spent with the other parent beyond simple conversational questions;
 - ii. discuss with the children any inappropriate adult, court, or legal matters; or
 - iii. blame, criticize, or disparage the other parent to the children.

Other Orders

- [76] Each party seeks various orders regarding travel with the children. I order that L.B. and D.F. are each permitted to travel domestically and internationally with the children during their respective parenting times. As soon as reasonably possible in advance of any travel, the travelling parent must provide the other with a detailed travel itinerary that includes flight information (if applicable), accommodation details, and any relevant contact information. If required, the non-travelling parent will provide written consent for travel to the travelling parent. The parent who last traveled with the children shall hold the children's passports

and nexus cards, and shall provide them to the other parent as needed.

- [77] D.F. seeks an order that neither party attend the children's activities on the other parent's parenting time without advance written consent. L.B. instead proposes that the party not exercising parenting time shall provide reasonable notice that they plan on attending the activity. I find it is not in the children's best interest to require that one parent consent to the other parent attending the children's activities. To the contrary, it is in the best interest of the children that both parents are actively involved in their lives to the greatest extent possible. I also decline to order reasonable notice of attendance, as I anticipate it could have the unintended consequence of creating conflict over the sufficiency of notice, which is not in the children's best interest.
- [78] The parties seek various other detailed orders that I consider go beyond what the court should direct: see *N.R.G. v. G.R.G.*, 2017 BCCA 407. For example, D.F. seeks an order that if the parent exercising parenting time is unable to care for the children for any reason, the other parent be given the first option to care for the children before other childcare is arranged. Each party seeks orders regarding how the children's contact with extended family will be handled. These are the type of parental responsibilities that should be exercised by L.B. and D.F., not directed by the court.
- [79] As another example, D.F. seeks an order requiring the children's continued attendance at their current elementary school until further court order or written agreement of the parties. Even if I were inclined to make such an order, I consider it would be unnecessary given my determination that the parties have joint-decision making authority over the children, which would include any decision to change their school enrolment. That same reasoning applies to the order the parties seek regarding K's attendance at a medical assessment, and the children's enrolment in counselling.

Child Support

Income Determination

- [80] The parties do not dispute that child support orders must be determined in accordance with the Federal Child Support Guidelines, SOD/97-176 ("Guidelines").
- [81] Each party alleges that the other is intentionally underemployed and has a higher earning capacity. L.B. points to D.F.'s failure to secure an additional home share contract after losing one of his clients in early 2024, and D.F. points to L.B.'s decision not to seek work as a strata manager despite having the necessary qualifications.
- [82] Having considered the evidence and the parties' submissions on this issue, I am not prepared to impute income to either party on the basis of underemployment. While it may be that L.B. and D.F. could each earn more income if they sought out different or additional employment, I find there is nothing improper or unreasonable about the choices they have each made. Other than their leaves of absence discussed below, they each maintain stable,

full-time employment that provides them with an income that appears to be sufficient to maintain a reasonable standard of living for each of them and the children.

- [83] Each party is critical of the leave of absence from employment taken by the other in the last year. There is relatively little evidence about these leaves, other than that they are related to the stress of this litigation. There is no basis in the evidence for me to assess whether either party's leave of absence was reasonable or justifiable. There is nothing in the evidence to suggest that the parties will be unable to return to work in their usual capacity now that the trial is behind them. In the circumstances, and given the state of the evidence before me, I will determine the income of each party on the basis of their usual full-time employment.
- [84] L.B. is employed as a licensed rental property manager and I accept that she earns an annual income of \$75,000 in her current position. I do not find that she is underemployed. I accept as reasonable her explanations of why she does not wish to leave this position and seek out higher-paying work as a strata manager, including the increased time demands of strata management work outside of regular business hours and her responsibilities as a parent, which must now be carried out on her own during her parenting time. The evidence is also insufficient for me to make findings about L.B.'s prospects of securing employment as a strata manager and how that would impact her income, if that was something she wished to do.
- [85] Assessing D.F.'s income is not straightforward, in part because of the state of his Financial Statement, filed June 24, 2024. The affidavit portion of the Financial Statement sets out evidence relevant to D.F.'s anticipated 2024 income, but the income statement portion of the Financial Statement is based on 2023 information. Further, the evidence regarding D.F.'s anticipated 2024 income leaves it to the reader to make some of the necessary calculations to understand his financial situation for 2024, which is unhelpful.
- [86] D.F. is employed as an education assistant with a school district. He testified that he does not know exact figures, but believes his annual income from that position is about \$30,000 annually. His evidence in the affidavit portion of his June 24, 2024, Financial Statement is that he earns \$3,400 per month in that position. Assuming a 10-month school year, I find that D.F.'s annual EA income is \$34,000 annually.
- [87] D.F. also earns income as a home share provider under a municipal community living assistance program. Until this year, he had two home share clients who had lived with him for many years. In May 2024, he gave up one of his home share contracts due to the client's advancing dementia and other issues. I find this was a reasonable decision, given the increasing needs of the client and D.F.'s other responsibilities.
- [88] L.B. suggests that D.F. is purposely underemployed by not securing a second home share client since then. The difficulty with this argument is that the evidence is insufficient to establish that a second home share client would be available to D.F., even if he wanted to pursue that as an option. In any event, I accept as reasonable D.F.'s decision to continue with only one home share client, given the time demands of his work as an education assistant

and his responsibilities as a parent, which he carries out on his own during his parenting time. I therefore find that D.F. is not underemployed as a home share provider.

- [89] Because D.F.'s home share income is non-taxable, the appropriate approach to determining his Guidelines income is to impute income from the home share that is equal to his net profit after deducting his expenses, grossed-up for income tax.
- [90] D.F. receives approximately \$49,000 annually (\$4,086.13 per month) for his current home share contract. L.B. takes issue with the expenses D.F. seeks to deduct from his home share income. The evidence and submissions regarding D.F.'s home share expenses are not entirely clear. In his closing submissions he claims total expenses of approximately \$9,400 in 2024, which includes expenses relating to the home share client whose contract came to an end in April 2024. This submission is difficult to reconcile with the evidence about expenses, which seems to suggest a higher figure.
- [91] I agree with L.B. that the evidence overstates D.F.'s expenses. D.F. calculates the home share expenses based on his total household expenses divided by 2 (or by 3, when he had the second home share client). I find that an equal division of many of the claimed expenses is not appropriate, because they would be incurred by D.F. even if he did not have a home share client. While I accept that the home share client increases D.F.'s expenses to a degree, I do not accept that they are doubled. D.F.'s allocation of expenses also does not account for the children also living in the home part time, soon to increase to half time.
- [92] The evidence is not sufficiently clear to allow me to calculate D.F.'s home share expenses with precision. Doing the best I can given the state of the evidence, I find that a reasonable approximation of expenses for the purpose of imputing D.F.'s Guidelines home share income is \$6,000 annually. Subtracting these expenses results in a pre-tax home share income of \$43,000. Applying a tax gross-up, I find the annual imputed home share income for D.F. is \$54,000. Adding this to his EA salary, I fix D.F.'s Guidelines income at \$88,000 as of May 1, 2024.
- [93] In terms of D.F.'s income prior to May 1, 2024, when he had still had two home share clients as well as some rental income that has now also ended, I adopt the previous finding of Justice Caldwell in this matter, in which he fixed D.F.'s Guidelines income at \$105,000 (interim order made November 14, 2023).
- [94] In summary, I determine the parties' Guidelines income is:
- i. L.B.: \$75,000
 - ii. D.F.:
 - (1) Up to April 30, 2024: \$105,000
 - (2) After May 1, 2024: \$88,000

Child Support

[95] The children have resided primarily with L.B. since the date of separation. Under my parenting schedule orders, the parties will have equal parenting time by November 15, 2024. I will therefore address child support in two time periods: (1) from the day after separation (November 1, 2022) to November 15, 2024, during which D.F. must pay child support to L.B.; and (2) after November 15, 2024, when child support will be payable on a set-off basis.

November 1, 2022, to November 15, 2024

- [96] L.B. seeks an order that D.F. pay retroactive child support for payments that were not made, or were made below the Guidelines amount, before November 1, 2023. D.F. seeks reimbursement for overpayment of child support from May 1, 2024 forward. Giving my findings, I agree that it is appropriate to make the orders sought. I find the best approach is to calculate both amounts and determine the amount owing based on a set-off of the two numbers.
- [97] Guidelines child support based on D.F.'s imputed income of \$105,000 is \$1,588. Based on my findings, this amount was payable by D.F. from November 1, 2022, to April 30, 2024, for a total amount owing of \$28,584 (\$1,588 x 18 months). From May 1, 2024 to November 15, 2024, D.F. must pay Guidelines child support based on an imputed income of \$88,000, which is \$1,359. The total amount owing for this time period is therefore \$8,833.50 (\$1,359 x 6.5 months). Adding those two figures, the total amount owed to L.B. for the period November 1, 2022, to November 15, 2024 is \$37,417.50.
- [98] D.F. has paid \$1,588 in monthly child support since November 1, 2023, for a total of \$19,850 (\$1,588 x 12.5 months, assuming payment to November 15, 2024). Prior to November 1, 2023, he had paid no child support until February 2023 and then paid monthly child support of \$1,054 from February to October 2023, for a total of \$9,486 (\$1,054 x 9 months). Adding those two figures, the total of D.F.'s child support payments to date is: \$29,336.
- [99] L.B. is owed the difference between these two figures, which represents outstanding unpaid child support owed by D.F.: \$8,081.50. As stated above, this assumes payment by D.F. to L.B. up to and including November 15, 2024. D.F.'s child support payment for November 1 to 15, 2024, shall be 50% of the monthly Guidelines amount.

After November 15, 2024

- [100] In light of the equal shared parenting arrangement that will be in place going forward, child support must be calculated on a set-off basis after November 15, 2024.

[101] The Guidelines amount for \$75,000, which is L.B.'s income, is \$1,164. As noted above, the Guidelines amount for D.F.'s imputed income, \$88,000, is \$1,359. The set-off between these two amounts is \$195. Therefore, for the period of November 15 to 30, 2024, D.F. shall pay child support to L.B. of \$97.50. Thereafter, D.F. shall pay child support to L.B. in the amount of \$195 per month, payable on the first day of each month for as long K and M continue to be children of the marriage.

Section 7 Expenses

- [102] L.B. seeks a determination that certain categories of expenses are section 7 "special or extraordinary" expenses: (1) medical, dental, and counselling expenses incurred on behalf of the children; (2) extracurricular activities, including but not limited to swimming, baseball, music lessons, and other such activities that the children wish to engage in or as agreed to between the parties; and (3) any other activities that the parties are able to agree to in writing. I decline to make a general order of this nature; I consider it more appropriate to determine section 7 expenses on an item-by-item basis, rather than making broad determinations regarding categories of expenses.
- [103] To the extent L.B. has itemized certain specific expenses, there is no evidence that the children's current activities go beyond ordinary extracurricular participation, and as such I do not consider them to be special or extraordinary expenses within the meaning of section 7.
- [104] To the extent section 7 expenses arise in the future, the parties shall share the expenses in proportion to their respective incomes, with D.F. being responsible for 55% of the section 7 expenses and L.B. being responsible for 45%. Prior to incurring a section 7 expense, the party wishing to claim the expense must notify the other party and seek their consent. If the parties cannot agree, the parties shall ask the parenting coordinator to decide the issue.
- [105] To facilitate reimbursement, the party who incurs the section 7 expense shall provide the other party with a request for reimbursement together with supporting documentation, such as payment receipts, as soon as practicable after incurring the expense. The party responsible for reimbursement shall pay their proportionate share of the section 7 expense to the other party within 14 days of receiving the request for reimbursement and supporting documentation.
- [106] Of course, the parties are free to agree to share the cost of extracurricular activities even if they are not section 7 expenses, and I encourage them to maintain open and respectful lines of communication in that regard. However, they should remain mindful that with the inevitable financial consequences of separation and maintaining two separate households, they will need to be realistic about the nature and number of extracurricular activities the children can reasonably participate in.

[107] D.F. seeks orders relating to contribution to and management of the children's RESPs. I decline to make the orders he is seeking, as I am not satisfied that I have jurisdiction to do so.

Annual Exchange of Information

[108] The parties shall exchange their financial information on an annual basis. The exchange of information shall occur by June 30 each year and shall include from D.F. all of the following information provided to L.B.: (1) gross home share income (i.e. home share income before expenses are deducted); (2) an itemized list of expenses that are claimed as deductions from the gross home share income; (3) net home share income (i.e. home share income after expenses are deducted); and (4) the tax gross-up calculation applied to the net home share income.

[109] D.F. seeks an order that commencing in 2025, the parties will review child support and proportionate sharing of section 7 expenses annually to account for changes in the parties' respective incomes. He asks that the order contemplate an adjustment, if necessary based on the financial disclosure, by July 1 of each year. I decline to make an order on the terms sought by D.F. I have ordered that the parties exchange financial information annually. If either party considers it appropriate to seek variation of child support based on that information, they are free to do so.

Spousal Support

[110] In determining spousal support, the starting point is the compensatory and non-compensatory objectives set out in s. 161 of the FLA. Section 162 of the FLA sets out criteria for determining the amount and duration of spousal support.

[111] The compensatory objectives, set out in s. 161(a) and (b) of the FLA, are "intended to provide redress for economic disadvantage arising from the marriage or the conferral of an economic advantage on the other spouse": P.W. v. G.Z., 2022 BCSC 1323 at para. 85. Non-compensatory support, which relates to the objectives set out in s. 161(c) and (d) of the FLA, "aims to narrow the gap between the needs and means of the spouses on marital breakdown": P.W. at para. 86. Flexibility is required when considering "needs"--it is a concept that "may vary according to the circumstances of the parties and the family unit as a whole": Myers v. Myers, 17 R.F.L. (4th) 298 at para. 10, 1995 CanLII 2274 (B.C.C.A.).

[112] As I understand L.B.'s position, she seeks spousal support on both a compensatory and non-compensatory basis. Considering the objectives of spousal support, and in light of all the evidence, including my findings regarding the parties' respective incomes, I am not satisfied that L.B. has demonstrated an entitlement to spousal support in this case.

- [113] Both L.B. and D.F. worked full time during their marriage, with the exception of parental leaves when the children were born. I find that, in somewhat different ways but to similar degrees, L.B. and D.F. have both been economically disadvantaged by the breakdown of the marriage. Both have suffered economic hardship arising from the breakdown of the relationship--this is inevitable with the move from one joint to two separate family households.
- [114] Both L.B. and D.F. are economically self-sufficient, and while D.F.'s income is higher, it is only modestly higher than that of L.B. With equally shared parenting time and responsibilities, I conclude that the child support order I have made provides sufficient apportionment of the financial consequences of caring for the children. When I consider the evidence as a whole, I conclude there is not a significant gap to be narrowed between the needs and means of the parties upon marital breakdown.

Division of Property

- [115] L.B. proposes a lump sum payment from D.F. to L.B. of \$526,626 in consideration of all matters involving the division of family property and family debt. D.F. objects to approaching division of property and debt in this manner.
- [116] While L.B.'s approach might be sensible in another context, such as mediation or another form of alternative dispute resolution, I conclude that, for present purposes, it is appropriate to address items individually. I understand, based on the evidence at trial, that the family property potentially subject to division consists of the family home (sold in 2024), a rental townhome (now the primary residence of D.F.), an investment condo (sold in July 2022), and a vacation property membership, trailer, and golf cart (all sold in 2024).

The family home

- [117] The parties agree to equally divide the proceeds from the family home.
- [118] D.F. seeks an equal division between the parties of the expenses he paid in respect of the family home after separation. I understand from D.F.'s submissions that he seeks reimbursement for 50% of the following expenses:
- a) Loan payments: \$56,404;
 - b) Insurance: \$5,845;
 - c) Property tax: \$3,849.96; and
 - d) Repairs and maintenance: \$1,816.20.
- [119] I find these expenses are reasonable and were paid by D.F. I conclude it is reasonable to account for an equal division of the above-itemized expenses as between the parties.

[120] There is no evidence of the final amount of sale proceeds for the family home, as the amount was not yet available at the time of trial. I leave it to the parties to calculate the final amount of family home sale proceeds payable to each of them, with the calculation including an allowance for D.F. to receive \$33,957.58 (50% of the above expenses, totalling \$67,915.16) paid out of L.B.'s share of the sale proceeds.

The rental townhome

[121] D.F. purchased the townhome in 2009 for \$290,775.26. It was his primary residence at the time. L.B. moved in to the townhome on December 1, 2017. The parties lived in the townhome together until moving to the family home, which was purchased in January 2020. D.F. has returned to living in the townhome as his primary residence.

[122] The parties agree the value of the townhome was \$590,000 as of December 1, 2017, and \$835,000 as of December 7, 2023. L.B. says the calculation of family property in relation to the townhome is the difference between those two figures. D.F. agrees the increased value of the townhome is family property, but calculates the figures based on equity held in the property (appraised value minus outstanding mortgage) rather than appraised value, which is set out in the following table:

Date
Appraisal Value
Outstanding Mortgage
Equity
December 1, 2017
\$590,000
\$234,565.66
\$355,434.34
December 7, 2023
\$835,000
\$199,657.64
\$635,342.36

[123] I prefer D.F.'s approach as more accurately representing the value of the family property. On D.F.'s approach, the value of family property in relation to the townhome is \$279,908.02 (\$635,342.36 minus \$355,434.34). D.F. says that capital gains tax should be taken into account in dividing this asset. The difficulty with this position is that the evidence he relies on to establish this figure is opinion evidence but was not tendered or admitted as such. Given the state of the evidence, I decline to make any capital gains tax adjustment to the

determination of this family property.

[124] D.F. seeks an unequal division of this asset on the grounds that the parties' marriage was of short duration (four years and eight months) and L.B. did not financially contribute toward the townhome. D.F. says that equal division would be significantly unfair in the circumstances. I do not agree. I find that L.B. moved into the townhome because it was the parties' intention that it become the family home. It was in fact the family home for a period of time, until they decided they needed a home with more space for their growing family. I acknowledge the parties' marriage was under five years, but in that time they merged their households, finances, and lives, had two children, and made plans for the future. While L.B. may not have contributed money toward the townhome, she contributed her time and effort to its upkeep as a family home and, later, to managing it as a rental property together with D.F. In the circumstances, I find that an equal division of this family asset is appropriate.

[125] I therefore order that D.F. shall retain ownership of the townhome, and L.B. shall receive \$139,954.01 (50% of \$279,908.02) as her equal share of the townhome family property.

The investment condo

[126] D.F. purchased a pre-sale condo unit as an investment property in February 2016. He sold the condo in July 2022.

[127] D.F. says the investment condo is not family property, or, alternatively, if the increase in value of the condo after December 1, 2017, is family property, D.F. seeks an unequal division given the short nature of the marriage, and says the capital gains tax liability must also be shared.

[128] I accept that the \$158,048.21 equity value of the condo as of December 1, 2017, is D.F.'s excluded property. I find the increase in the value of the investment condo after December 1, 2017, is family property. L.B. made a significant financial contribution toward the condo debt when the parties moved in together (\$100,000, which came from selling the home she owned when she met D.F.), and I find that both parties thereafter treated the condo as a joint family asset. I accept L.B.'s evidence regarding her contributions toward managing the condo as a rental property. I find there should be an equal division of this family property.

[129] That said, it is not clear to me that this finding has any practical implications for the parties, given that, as noted above, the investment condo was sold prior to the parties' separation and, as I understand it, there are no remaining condo sale proceeds to be divided. I therefore decline to make any order regarding the condo sale proceeds. If my understanding is incorrect, and if the above findings are insufficient for the parties to resolve the division of this asset, they are at liberty to contact scheduling within 30 days of this decision to request my directions on how to proceed.

Vacation property

- [130] D.F. purchased a vacation property membership and trailer in 2015. The parties subsequently bought a new trailer and golf cart for the property. The membership, trailer, and golf cart have all since been sold.
- [131] D.F. says the value of the membership as of December 1, 2017 was \$30,000, which he claims as excluded property. The only evidence of this valuation is D.F.'s direct testimony. As I understand L.B.'s position, she agrees D.F. has an excluded property claim in respect of this asset, but says the value is \$19,500, which is what D.F. paid for the membership and trailer in 2015.
- [132] Based on the evidence regarding the sale price of the membership and new trailer in 2024, it is clear that the value of this family property increased over time. The difficulty is that the only evidence regarding the value as at December 1, 2017, is D.F.'s direct testimony. It is not clear how D.F. arrived at that figure or what information it is based on. D.F. was not cross-examined on this specific evidence.
- [133] Given the demonstrated appreciation of this asset, I conclude it would not be reasonable to value the excluded property claim with reference to the original 2015 purchase price as L.B. proposes. In the circumstances, and given the evidence on this issue, including the evidence regarding the ultimate sale price of the membership, I find that \$30,000 is a reasonable estimate of the value of the membership and trailer as of December 1, 2017.
- [134] That said, as with the investment condo, it is not clear to me that the value of the excluded property has any practical implications for the parties. This family property has been sold and, as set out in the Agreed Statement of Facts, the parties agreed to share the proceeds equally. Given my understanding that this family property has already been divided, I decline to make any order in respect of the vacation property. If my understanding is incorrect, and if the above findings are insufficient for the parties to resolve the division of this family property, they are at liberty to contact scheduling within 30 days of this decision to request my directions on how to proceed.

Canada Pension Plan

- [135] D.F. seeks an order that either party may apply for equalization for the parties' unadjusted pensionable earnings under the Canada Pension Plan for the period between the start and end date of the parties' marriage. However, the evidence and submissions are insufficient for me to understand the parties' positions in respect of this issue. I therefore make no order in that regard.

Occupational Rent

[136] L.B. advances a claim for occupational rent in her Amended Notice of Family Claim. However, she made no submissions in support of this claim. I have therefore not considered it and make no order in that regard.

Divorce

[137] I am satisfied that there is no possibility of reconciliation and that the other Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] pre-requisites to granting a divorce are met. I therefore order that L.B. and D.F. are divorced, with the divorce to take effect on the 31st day after the date of this order.

Conclusion

[138] In summary, I make the following orders:

1. The following order for parenting time is made under the FLA: L.B. and D.F. will share parenting time equally, on a 2-2-5-5 schedule, subject to the following exceptions:
 - a. School Breaks: In even years, L.B. shall have parenting time for the first half of Spring Break and Christmas break and D.F. shall have parenting time for the second half of Spring break and Christmas break. In odd years, D.F. shall have parenting time for the first half of Spring Break and Christmas break and L.B. shall have parenting time for the second half of Spring break and Christmas break.
 - b. Easter: if Good Friday and Easter Monday do not fall during the children's school Spring Break, the parties shall equally share parenting time for the period commencing after school on the Thursday before Good Friday and ending at school drop off on the Tuesday following Easter Monday. The parent who has regularly scheduled parenting time on the Thursday before Good Friday shall have parenting time for the first half of this period. The transition from the care of one parent to the other during this period will occur on Saturday at 7:30 pm.
 - c. Summer: During Summer break from school, each party shall have an uninterrupted two-week period of parenting time. If the parties cannot agree on when their respective two-week periods will occur, L.B.'s two-week period will commence on the first Saturday in July, and D.F.'s two-week period will commence on the first Saturday in August.
 - d. Special Occasions: D.F. will have parenting time with the children from 9:00 am to 7:00 pm on Father's Day, if it does not fall during his regular parenting time. L.B. will have parenting time with the children from 9:00 am to 7:00 pm on Mother's Day, if it does not fall during her regular parenting time. If the parties' respective birthdays do not fall during their regular parenting time, they will have parenting time with the children from after school to 7:30 pm if the birthday falls on a school day, or from 10:00 am to 7:00 pm if the birthday falls on a non-school day.

2. The new parenting time arrangement shall commence no later than two weeks after the release of this decision.
3. By mutual agreement, the parties may modify the parenting schedule, including the exceptions to the parenting schedule.
4. Transitions of the children from the care of one parent to the other shall occur as follows: On school days, the transitions of parenting time will occur at the children's school. When school is not in session, unless the parties agree otherwise, the parent whose parenting time is ending will drop the children off at the other parent's home. If it becomes necessary to pick up a child early from school or from care arrangements during non-school days, for example, due to illness, pick up is the responsibility of the parent who will have the child in their home that night.
5. L.B. and D.F. will share equally all of the s. 41 parental responsibilities for the children under s. 40(2) of the FLA, pursuant to the Joyce Model as follows:
 - a. In the event of the death of a guardian, the surviving guardian will be the only guardian of the children;
 - b. Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;
 - c. 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 health (except emergency decisions), education, religious institutions, and general welfare;
 - d. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
 - e. The guardians shall jointly engage a parenting coordinator and, in the event that the guardians cannot reach agreement on parenting decisions after making best efforts, the parenting coordinator will, after consultation with the parties, decide the matter;
 - f. The guardians will make best efforts to resolve parenting disagreements without resort to the parenting coordinator, and will not request a decision from the parenting coordinator until they have exhausted all efforts to resolve their disagreement; and
 - g. Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third-party care givers.
6. The parties shall use Our Family Wizard or, if they agree, a comparable tool for their primary communication method, with the cost to be shared equally by the parties.

7. The parties shall attend regular co-parenting counselling sessions, at a frequency recommended by the counsellor, for a period of one year or until the counsellor recommends sessions can be discontinued, whichever is earlier.
8. Neither party shall attend the residence of the other unless for the purpose of exchanging the children under the parenting schedule or unless otherwise invited in writing.
9. 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 in a positive and respectful manner; and
 - c. make a real effort to maintain polite, respectful communication with each other, refraining from any negative or hostile criticism, communication, or argument in front of the children.
10. 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.
11. L.B. and D.F. are each permitted to travel domestically and internationally with the children during their respective parenting times. As soon as reasonably possible in advance of any travel, the travelling parent must provide the other with a detailed travel itinerary that includes flight information (if applicable), accommodation details, and any relevant contact information. If required, the non-travelling parent will provide written consent for travel to the travelling parent. The parent who last traveled with the children shall hold the children's passports and nexus cards, and shall provide them to the other parent as needed.
12. L.B.'s income for the purpose of calculating child support is \$75,000.
13. D.F.'s income for the purpose of calculating child support is \$105,000 up to April 30, 2024, and \$88,000 after May 1, 2024.
14. D.F. shall pay to L.B. \$8,081.50 as outstanding child support owed for the period November 1, 2022, to November 15, 2024.
15. For the period November 15 to 30, 2024, D.F. shall pay child support to L.B. of \$97.50. Thereafter, D.F. shall pay child support to L.B. in the amount of \$195 per month, payable on the first day of each month for as long as the children continue to be children of the marriage. This order is subject to review after one year at the option of either party.

16. To the extent section 7 expenses arise in the future, the parties shall share the expenses in proportion to their respective incomes, with D.F. being responsible for 55% of the section 7 expenses and L.B. being responsible for 45%. Prior to incurring a section 7 expense, the party wishing to claim the expense must notify the other party and seek their consent. If the parties cannot agree, the parties shall ask the parenting coordinator to decide the issue.
 17. To facilitate reimbursement, the party who incurs the section 7 expense shall provide the other party with a request for reimbursement together with supporting documentation, such as payment receipts, as soon as practicable after incurring the expense. The party responsible for reimbursement shall pay their proportionate share of the section 7 expense to the other party within 14 days of receiving the request for reimbursement and supporting documentation.
 18. The parties shall exchange their financial information on an annual basis. The exchange of information shall occur by June 30 each year and shall include from D.F. all of the following information provided to L.B.: (1) gross home share income (i.e. home share income before expenses are deducted); (2) a itemized list of expenses that are claimed as deductions from the gross home share income; (3) net home share income (i.e. home share income after expenses are deducted); and (4) the tax gross-up calculation applied to the net home share income.
 19. L.B. shall receive 50% of the proceeds from the sale of the family home, less \$33,957.58.
 20. D.F. shall retain ownership of the townhouse, and L.B. shall receive \$139,954.01 as her equal share of the townhome family property.
 21. Subject to s. 12 of the DA, the Claimant, L.B., and the Respondent, D.F., are divorced, the divorce to take effect on the 31st day after the date of this order.
- [139] As success was shared, the parties shall bear their own costs.
- [140] I am seized of any applications in this matter for two years from the date of these reasons. After the expiry of two years, the parties may request to appear before me, but I will no longer be seized.

"Ramsay J."

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Prepared on 26 October 2026 · Esheria