

CANADA / JUDGMENT

L.E.G. v. R.C.M.

2022 BCSC 1261

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1261 L.E.G. v. R.C.M. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: L.E.G. v. R.C.M., 2022 BCSC 1261 Date: 20220722 Docket: 171663 Registry: Victoria Between: L.E.G. Claimant And R.C.M. Respondent Before: The Honourable Madam Justice Murray Reasons for Judgment Counsel for Claimant: C. Buchan Counsel for Respondent: H. Doehring Place and Date of Trial: Victoria, B.C. December 13-17, 2021, February 24-25 and March 9, 29, 2022 Place and Date of Judgment: Vancouver, B.C. July 22, 2022 Table of Contents INTRODUCTION.. 3 ISSUES. 4 CREDIBILITY. 5 ISSUE 1: PARENTING TIME FOR K.M.M. 6 ISSUE 2: CHILD SUPPORT AND s. 7 EXPENSES. 12 R.C.M.'s income. 13 Child Support 16 Section 7 expenses. 20 ISSUE 3: DIVISION OF FAMILY PROPERTY AND DEBT. 22 Debt 22 Property. 24 Insurance Policy. 24 R.C.M.'s Inheritance. 24 CONCLUSION.. 24

INTRODUCTION

- [1] The issues in this family trial involve parenting arrangements for the parties' youngest child; division of family property and debt; and child support.
- [2] The parties began to live together in a marriage-like relationship in 1995. They have three daughters: K.E.M., born March 28, 2000, K.I.M., born July 29, 2001 and K.M.M., born May 7, 2009. The parties differ over when they separated. The mother, L.E.G., says that in February 2016 she advised the father, R.C.M., that the relationship was not working and moved to a separate bedroom in the family home, then moved out of the family home in December 2016. R.C.M. maintains that the parties did not separate until November 30, 2017.
- [3] For the purposes of this trial, the relevant date is when the parties began to live in different homes. I find that date to be December 1, 2016, when L.E.G. and the three girls moved out of the family home into a basement suite. L.E.G.'s evidence on this point is corroborated by her landlord and her banking records which show her rent payments.

- [4] After L.E.G. and the girls moved out of the family home, the parties' two older daughters chose not to have contact with R.C.M. However, the parties shared parenting time of K.M.M., who was then seven years old, on a three days on, three days off basis. In addition, R.C.M. had K.M.M. when L.E.G. travelled for work, which she did regularly. This arrangement ceased in about May 2017 when R.C.M. had to start working again. According to L.E.G., after that R.C.M. rarely saw K.M.M.
- [5] In August 2018 L.E.G. and K.M.M. moved to Prince George. The two oldest girls, wanting to stay on Vancouver Island, moved in with their respective boyfriends' families. Since K.M.M. moved to Prince George R.C.M. has seen her sparingly, only when L.E.G. has brought her to Vancouver Island. R.C.M. has not made any effort to go to Prince George to see K.M.M. Pursuant to the January 12, 2021, order of Mr. Justice Gaul ("the Gaul Order"), R.C.M. has telephone or electronic contact with K.M.M. twice a week. According to the Views of the Child report prepared for this trial, K.M.M. is finding this arrangement cumbersome. I will return to this.
- [6] After separation on December 1, 2016 R.C.M. did not pay any child support until ordered to do so in December 2020. Pursuant to that court order R.C.M. must pay interim child support for K.M.M. of \$329 per month, commencing December 15, 2020 and continuing on the 15th of each month until further order of the court or by agreement of the parties. That order was made by consent, based on R.C.M. having a guideline income of \$35,000 per annum, on a without prejudice basis.
- [7] In this trial, L.E.G. seeks orders for child support and special expenses for K.M.M. based on R.C.M. having an imputed income of \$80,000. She also seeks orders for arrears of child support and special expenses for all three girls dating back to December 1, 2016. While R.C.M. accepts his obligation to financially support his youngest child K.M.M., he takes issue with L.E.G.'s application to impute to him an annual income of \$80,000, arguing that it is unrealistically high. R.C.M. is a self-employed roofer, carrying on business in a company he formed. Throughout their relationship, L.E.G. assisted R.C.M. with his business. In 2016 L.E.G. started selling insurance. She continues to work in the insurance business.
- [8] The family residence was sold on September 16, 2019. Net proceeds of \$120,940 were placed in L.E.G.'s counsel's trust account. After interim distributions to the parties (totalling \$7,000 to R.C.M. and \$22,000 to L.E.G.) and payment for the Views of the Child report, \$87,940 remains. It is these proceeds that are at the centre of the family property dispute. L.E.G. takes the position that she should receive all of the remaining monies in trust. Also in issue are the debts paid from the proceeds of sale. L.E.G. argues that many of the debts paid from the proceeds of sale were R.C.M.'s personal debts -- not family debts. R.C.M. disagrees.

ISSUES

- [9] The issues to be determined are:

1. Parenting time of K.M.M.;
2. Child support and s. 7 expenses going forward for K.M.M. and arrears for all three girls;
3. Distribution of family property and debt.

[10] I will consider each issue in turn. Before I do, I will discuss the credibility of the witnesses, including the parties. CREDIBILITY

[11] Credibility is a factor in this trial as the parties gave conflicting evidence on virtually every material point. In assessing credibility the court must consider many factors, including the witness's ability and opportunity to observe events; the firmness of the witness's memory; the witness's ability to resist the influence of their own interests to modify their recollection; whether the witness's evidence harmonizes with independent evidence that has been accepted; whether the witness changes their testimony during direct and cross-examination; whether the witness's testimony seems unreasonable, impossible, or unlikely; whether a witness has a motive to lie; and the demeanour of a witness generally: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.

[12] I found L.E.G.'s evidence to be credible and reliable. She was organised, straightforward and unshaken on cross-examination. She was also fair. Contrary to how R.C.M. perceived her evidence, she was not trying to malign R.C.M.; she simply stated facts. On several occasions she testified how talented R.C.M. is. Most importantly, her evidence does not stand alone; it is corroborated by the evidence of the other witnesses and documentary evidence.

[13] To the contrary R.C.M.'s testimony was meandering and vague. His answers were often not responsive to the questions he was being asked. It was clear that he had things he wanted to say and he was going to say them regardless of the question. On several occasions he had to be directed to answer the question. R.C.M.'s evidence had recurring themes: he is a victim; everyone is out to get him; nothing is his fault; no one understands him; L.E.G. and his sister poisoned the girls against him. His evidence for the most part is unsupported and contrary to all of the other evidence. Overall, I find his evidence to be unreliable. Accordingly, unless otherwise specified, I do not accept R.C.M.'s evidence unless it is supported by other evidence and where R.C.M.'s evidence conflicts with other evidence, I prefer the other evidence.

[14] K.E.M. impressed me as a poised, mature, bright, and well-spoken young woman. Although she has deep-rooted issues with her father, I found her to be credible and reliable. Her evidence was given with emotion, clearly from the heart. Like her mother, K.E.M. testified about facts. She told stories about things that her father did which impacted her and the rest of the family. She told the court how his behaviour impacted her. She gave personal details of the issues she has suffered as a result. Her demeanour on the stand was consistent with her evidence. It was obviously difficult for her to share some of the details. Of significance her evidence does not stand alone: it is corroborated by other evidence.

- [15] J.A.'s abhorrence of her brother was apparent throughout her evidence. As her feelings toward R.C.M. likely taints her evidence, I accept only those parts of her evidence that are corroborated by other evidence.
- [16] Conversely B.M., R.C.M.'s mother, is understandably his biggest supporter. Her evidence was clearly biased in favour of him. For that reason, I accept her evidence only where it is corroborated by other evidence. ISSUE 1: PARENTING TIME FOR K.M.M.
- [17] As stated above, R.C.M. has had very little contact with K.M.M. since she moved with her mother to Prince George in August 2018. The only contact has been during short visits a couple of times a year when L.E.G. brings K.M.M. to Vancouver Island. Even then, K.M.M. sees her father for only an hour or two, and only in the company of her grandmother, B.M.. R.C.M. has made no effort to visit K.M.M. in Prince George. At present R.C.M.'s contact with K.M.M. is twice weekly phone / FaceTime calls as per the Gaul Order.
- [18] The parties agree that they both should be joint guardians of K.M.M. and that K.M.M. will live primarily with L.E.G. L.E.G. is content with R.C.M. having "reasonable and generous" parenting time, but she believes that the amount of his parenting time should be in accordance with K.M.M.'s wishes. R.C.M. takes the position that specified parenting time should be set regardless of K.M.M.'s wishes. R.C.M. argues that K.M.M. has been alienated from him by L.E.G., his sister, J.A., and his two eldest daughters and that there needs to be a reconciliation of his formerly close relationship with his youngest daughter.
- [19] Much of the trial was consumed with evidence pertaining to R.C.M.'s ability to parent, and was primarily focussed on his misuse of alcohol. While R.C.M. denies that he has an issue with alcohol and says that he does not drink, all of the evidence is to the contrary. I have no difficulty accepting that R.C.M. has a serious, long standing issue with alcohol that has affected every facet of his life, including his relationships with his family. There is no doubt that R.C.M.'s alcoholism led to the demise of his marriage and his estrangement from his children.
- [20] L.E.G. described R.C.M.'s long-time issues with alcoholism, his erratic behaviour, and the impact it had, and continues to have, on her and the girls. Her evidence, which I accept, painted a picture of a life of chaos with R.C.M. K.E.M., R.C.M.'s eldest daughter, testified that her father is an alcoholic. She described R.C.M.'s volatile and unpredictable behaviour. She said that she does not see her father because of "his behaviour my whole life". J.A. testified that every family occasion was marred by her brother's drinking and his drunk and belligerent behaviour. Even B.M. testified that R.C.M.'s drinking was a concern to all. She described life with R.C.M. as a "rollercoaster". Despite that, she said that she is "pretty sure" that he will go to counselling. I find that statement to be hopeful but unlikely as R.C.M. denies having an issue with alcohol. Further R.C.M. has been urged to go to counselling for years and has not done so.

- [21] All witnesses spoke of a November 2017 intervention organised by R.C.M.'s father (now deceased), the goal of which was to convince R.C.M. to enter an addiction treatment program. The whole family was invited to the three-day event which was facilitated by an addictions expert. Everyone in the family was given an opportunity to share their feelings. R.C.M.'s two oldest daughters, K.E.M. and K.I.M. wrote letters that were read by their cousin to R.C.M. R.C.M. failed to attend the final day and did not commit to entering a rehabilitative program.
- [22] The degree to which the intervention was unsuccessful was made clear by R.C.M. in his evidence. Refusing to call it an intervention, he insists that it was a "family meeting of change", and that it was to help everyone, not just him. Regarding the letters written by his daughters, R.C.M. said that they were "embellished" and "influenced" by L.E.G. and J.A. He steadfastly maintains that the alcohol accusations are unfair and he denies having a problem with alcohol, saying "we all drank in the day". R.C.M. expressed that it saddened him that "they" (referring to L.E.G., J.A. and K.E.M.) were using allegations of alcohol abuse in court.
- [23] By agreement of the parties, a Views of the Child report was prepared by Ms. Joan Cotie and filed as an exhibit in this trial to assist the court with the issue of parenting time with K.M.M. Ms. Cotie was asked by counsel to address four areas: 1) whether R.C.M. is being alienated from K.M.M.; 2) whether K.M.M. is being estranged from her father; 3) whether K.M.M. has been influenced to present a particular view; and 4) whether K.M.M. understands the implications of the views/preferences being expressed. Both parties provided Ms. Cotie with the names and contact information of people they wished to be interviewed for the report. In addition to the parties, Ms. Cotie interviewed the three girls and K.M.M.'s hockey coach. Due to the COVID-19 pandemic, all interviews were conducted via Zoom.
- [24] K.M.M., who turned 13 on May 7 of this year, was interviewed twice. Her interviews are significant as she (properly) was not called as a witness at trial. I find the following from K.M.M.'s interviews to be noteworthy:
1. She last saw her father in the summer of 2020;
 2. Her father is important to her but she is "just not super comfortable with him";
 3. She wants to see her father but not at set times or on a set schedule, only for short visits, and only if her grandmother, B.M., is present. She does not want to stay with her father but would be okay seeing him if her grandmother is present;
 4. She would see her father if he visited Prince George but only during the day as she does not want to spend an overnight with him;
 5. She would prefer to talk to her father once or twice a month instead of twice a week (as per the Gaul Order);

6. She feels that her father has been trying to control her through the phone he gave her and by recording a conversation she had with her sister;
 7. She does not feel safe with her father because "cops came one night when he was drinking";
 8. She thinks her father has a drinking problem and would like him to stop drinking;
 9. Hockey is very important to her and occupies much of her time. She is playing league and representative hockey and plans to play summer hockey;
 10. She also likes horseback riding, a sport B.M. introduced her to when she was young and still lived on Vancouver Island;
 11. She is okay with both parents being at an activity, like her hockey games, at the same time.
- [25] After conducting the interviews Ms. Cotie concluded that "alienation on the part of either parent was not apparent". She further concluded that:
1. "It will require a slow build up for [K.M.M.] to trust and feel safe and comfortable with her Dad. [K.M.M.] expressed concerns for her Dad's drinking and a wish that he did not engage in such behaviour. Work toward this goal may encourage [K.M.M.] to feel more comfortable with her Dad and start to rebuild the relationship."
 2. It did not appear that K.M.M. was coached by anyone. K.M.M. "appeared to be speaking her own mind and her sisters said that they would support [K.M.M.] in whatever decision she made."
- [26] R.C.M. takes issue with Ms. Cotie's report finding that K.M.M. has not been alienated from him. B.M. agrees, saying that K.M.M. is being influenced by "women that have hatred toward [R.C.M.]".
- [27] I disagree. There is no evidence of alienation, other than the assertions of R.C.M. and his mother. Contrary to R.C.M.'s assertions, his relationship with his daughter was not perfect before she moved to Prince George. The evidence is that K.M.M. stopped seeing her father in around May 2017, over a year before the move.
- [28] I do not accept that K.M.M. has been alienated. Ms. Cotie was best positioned to reach that opinion. She is experienced in interviewing children and writing reports for the court. Her evidence was unchallenged in this trial. Additionally, the feelings K.M.M. conveyed to Ms. Cotie about not feeling comfortable with her father, his controlling behaviour, and his drinking, all fits with the evidence of K.E.M., L.E.G., J.A. and B.M. It also fits with the way R.C.M. gave his evidence in court.

- [29] The sole consideration in determining parenting time is the best interests of the child. On all of the evidence, I have no difficulty concluding that it is in K.M.M.'s best interests to live primarily with her mother and for R.C.M. to have reasonable and generous parenting time in accordance with K.M.M.'s wishes and as arranged by the parties. In that regard, B.M. testified that she is willing to facilitate visits between K.M.M. and R.C.M. so they can rebuild their relationship.
- [30] It is clear that the relationship between R.C.M. and K.M.M. will take time and small steps. There are two things standing in the way of R.C.M.'s relationship with K.M.M.-- his drinking and his lack of effort in trying to connect with her. Until he admits that he has a problem with alcohol and takes steps to deal with it, it is unlikely that any progress will be made. In reaching this conclusion I am mindful that R.C.M. vehemently denies that he has or ever had an issue with alcohol. That is in stark contrast to all of the other evidence. The onus is on R.C.M. to make a change in his life in order to mend his relationships with K.M.M. He has to start making an effort with her. It is up to him to foster a relationship.
- [31] R.C.M.'s plan that there be a parenting coordinator and scheduled holiday parenting times for K.M.M. to visit him on Vancouver Island for days or weeks at a time is unrealistic. While I agree that a child's wishes should not be a deciding factor, in this case, given all of the circumstances, including K.M.M.'s age and the fact that she does not feel comfortable enough with her father to spend more than an hour or two with him, and then only in the presence of her grandmother, I give them significant weight.
- [32] I decline to make the order sought by R.C.M. that L.E.G. be responsible for the cost of R.C.M.'s trips to Prince George. I find no basis for doing so. In the past, L.E.G. has borne the responsibility and cost of her trips to Vancouver Island when R.C.M. sees K.M.M. R.C.M. will be solely responsible for all expenses to exercise his parenting time.
- [33] I further decline to order a parenting coordinator as urged by R.C.M. There is no basis for doing so at this point. Similarly, there is no basis for an order prohibiting the parties from discussing parenting issues with K.M.M. or to "shield" K.M.M. from discussion with her sisters or other family members about parenting time. There is no evidence before me to indicate that there is any improper communication with K.M.M. And as stated above, Ms. Cotie found no evidence that K.M.M. is being coached or improperly influenced.
- [34] Finally, although K.M.M. expressed a desire to reduce the twice-weekly communications with her father as per the Gaul order, I am not persuaded that would be in her best interests. It is important to keep lines of communication open between R.C.M. and K.M.M., particularly if he sincerely attempts to rebuild their relationship.

- [35] On a related note, R.C.M. consents to the order sought by L.E.G. that she may apply for the renewal of K.M.M.'s passport without his consent and that K.M.M. may travel outside of Canada without the necessity of a Statutory Declaration from him, provided that L.E.G. provides him with notice of the travel itinerary three weeks prior to travel. If R.C.M. believes the travel to be contrary to K.M.M.'s best interests he may apply to a court to disallow the travel.
- [36] I will now turn to the next issue: child support. ISSUE 2: CHILD SUPPORT AND s. 7 EXPENSES
- [37] As stated above, L.E.G. seeks child support and s. 7 expenses for K.M.M., both prospective and retroactive, and child support and s. 7 expenses for K.E.M. and K.I.M. from the date of separation until they turned 19. She seeks that the support be based on an imputed income of \$80,000 on the basis that R.C.M. is intentionally under-employed.
- [38] R.C.M. argues that he is not responsible for support for the two oldest girls as they voluntarily withdrew from the parties' charge when L.E.G. left the family home pursuant to s. 147(b) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. He acknowledges his responsibility to K.M.M. but says that \$80,000 is unrealistically high and asks this court to impute an income of \$40,000.
- [39] Three fundamental principles apply to all child support applications:
1. parents have a joint and ongoing legal obligation to support their children;
 2. the children, not the custodial parent, have the right to support; and
 3. support payments are based on earning capacity and not only on what a parent actually earns. As a result, a parent has a legal obligation to earn as much as he or she is reasonably capable of earning. [citations omitted] (M.A.G. v. P.L.M., 2014 BCSC 126, at para. 52)
- [40] Section 147(1)(b) of the FLA creates a limited exception to the legal obligation of parents and guardians to support their children when the child "is under 19 years of age and has voluntarily withdrawn from his or her parents' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable." R.C.M. argues that this exception applies to K.I.M. and K.E.M. and therefore relieves him from any retroactive support. I will return this point.
- [41] The leading case on retroactive awards for child support is D.B.S. v. S.R.G., 2006 SCC 37 [D.B.S.]. In D.B.S., the court emphasized that retroactive support awards should not be seen as exceptional. The decision to order retroactive support is a matter of discretion to be exercised in light of the particular circumstances. The factors to be weighed include:
- a) the needs and circumstances of the recipient;
 - b) the conduct of the payor;

- c) the reason for a delay in seeking support; and
- d) any hardship occasioned by the award.

[42] Before I consider the amount of child support owing I must determine R.C.M.'s income.
R.C.M.'s income

[43] As stated above, L.E.G. seeks to have an income of \$80,000 imputed to R.C.M. on the basis that he is intentionally underemployed. In making this submission she relies on the fact that R.C.M. is very good at his trade and that there is a lot of work. She knows this as she was involved in R.C.M.'s business when they were together. She did his books. She claims that R.C.M.'s tax returns do not accurately reflect his income as he wrote off family expenses. L.E.G. has filed documents showing that R.C.M. could be earning \$50 per hour working as a roofer. L.E.G. argues that if R.C.M. worked 40 hours a week, 50 weeks a year, he would make \$80,000.

[44] The test for imputing income was set out by our Court of Appeal in *Marquez v. Zapiola*, 2013 BCCA 433:

[36] For the purposes of both child and spousal support, there is a broad judicial discretion to impute income to either or both spouses. However, the party seeking to have income imputed to the other spouse has the burden of establishing an evidentiary basis for such a finding.

[37] The test for imputing income for intentional under-employment or unemployment is one of reasonableness, having regard to the parties' capacity to earn income in light of their age, education, health, work history and work availability. A spouse's capacity to earn income will include that person's ability to work or to be trained to work. See *Van Gool v. Van Gool* (1998), 113 B.C.A.C. 200, 44 R.F.L. (4th) 314 at paras. 28-31, *Barker v. Barker*, 2005 BCCA 177, 45 B.C.L.R. (4th) 43 at para. 19, and *McCaffrey v. Paleolog*, 2011 BCCA 378, 24 B.C.L.R. (5th) 62 at para. 46. [Emphasis added.]

[45] Under s. 19 of the Federal Child Support Guidelines, SOR/1997-175, [Guidelines], circumstances to be considered include: 19.

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse; []
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income.

- [46] R.C.M. responds that he has never made close to \$80,000 a year and is not capable of doing so now. According to R.C.M., in around 2013 he was getting worn out from roofing. He and L.E.G. reversed roles: she started selling insurance and he took over caring for the children full-time. In 2019, he was not working "that much" as he was working on the family home to improve it for sale. The house sold in July 2019.
- [47] R.C.M. argues that it is unrealistic to expect a roofer to work 40 hours a week, 50 weeks a year. Not only is roofing too physically demanding to work those hours, it is weather dependent. He submits that he is now physically unable to roof full-time. He testified that he currently works only half of the year.
- [48] R.C.M. submits that this court should find his income to be what he reported on his tax returns, which is as follows: 2017 \$37,813 2018 \$33,332 2019 \$3,829 2020 \$27,650 2021 \$27,650
- [49] I am unable to accede to R.C.M.'s suggestion for two reasons. First, I am not satisfied, on R.C.M.'s explanations, that the deductions made from the business income are reasonable. And second, based on the income he reported and his explanations for not working, I find that R.C.M. was, at least at times, intentionally under-employed.
- [50] I find the following facts significant in determining the amount of income to be imputed to R.C.M.:
1. Roofing is a physically demanding trade;
 2. Roofers cannot work in inclement weather;
 3. R.C.M. has over 25 years of experience in the roofing business;
 4. He is a talented roofer and has "reliable clients that pay their bills" (his description);
 5. There is roofing work available in the Victoria area.
- [51] In addition to the above, in considering R.C.M.'s ability to work, I must take into account the following: he is now 54 years old and finds the work increasingly wearing; his issues with alcohol likely impact his ability to work and run a business; and given his personality and the fact that he has been self-employed for his entire career, it is doubtful that he could work for anyone else.
- [52] Considering all of the evidence and all of the circumstances, I find that \$50,000 is a reasonable income to impute to R.C.M. for all of the years in question. Child Support
- [53] The relevant dates in this case are as follows:
1. December 1, 2016: L.E.G. and the children move out of the family home and into the basement suite;
 2. April 28, 2017: L.E.G. files a Notice of Family Claim seeking the child support outlined above;
 3. May 31, 2017: Joint parenting time of K.M.M. ends;

4. June 19, 2017: R.C.M. files a Response to Family Claim;
5. June 16, 2017: R.C.M. files a Counterclaim seeking child support for K.M.M.;
6. March 28, 2018: K.E.M. turns 19;
7. August 28, 2018: L.E.G. and K.M.M. move to Prince George and K.E.M. and K.I.M. move in with their boyfriends' families;
8. July 29, 2020: K.I.M. turns 19;
9. March 28, 2028: K.M.M. turns 19.

[54] As outlined above, on December 1, 2016 all of the girls moved out of the family home and into the basement suite with L.E.G. K.E.M. and K.I.M. have had no contact with their father since then.

[55] R.C.M. testified that K.E.M. and K.I.M. moved in with their boyfriends on December 1, 2016. He therefore takes the position that pursuant to s. 147(1)(b) of the FLA he is under no obligation to pay retroactive child support for them as they voluntarily withdrew from his and L.E.G.'s care on that date.

[56] Both K.E.M. and L.E.G. testified that K.E.M. and K.I.M. lived with L.E.G. until she moved to Prince George at the end of August 2018. It was then that both girls moved in with their boyfriends' families so they could stay on Vancouver Island. I find K.E.M.'s and L.E.G.'s evidence to be credible and reliable on this point and I accept it. From the evidence I find the following additional facts:

1. Neither girl was charged room and board at their boyfriends' homes;
2. L.E.G. did not contribute to their room and board. She did however help them pay their phone bills and car insurance and gave them money if they needed it;
3. R.C.M. did not contribute in any way.

[57] K.E.M. was 19 by the time her mother moved to Prince George, so child support was no longer an issue. With respect to K.I.M., given that neither party contributed financially to her room and board, I find that K.I.M. voluntarily withdrew from the parties' charge as of August 28, 2018. Accordingly, I find that R.C.M. should have been paying child support as follows:

1. for K.E.M. from December 1, 2016 to March 28, 2018 when she turned 19; and
2. for K.I.M. from December 1, 2016 to August 28, 2018 when she voluntarily withdrew from her parents' charge.

[58] There is no question that R.C.M. is under an obligation to support K.M.M. until she is at least 19. The issue is whether there is a period for which he is not obliged to pay child support.

- [59] R.C.M. argues that he was K.M.M.'s primary caregiver from the time of the separation in 2016 to March 2018 because L.E.G. was travelling for work for 10 to 21 days a month during this time. R.C.M. says that he was unable to work full-time because of his parenting responsibilities; he "fit jobs in" when he could. This arrangement ended when L.E.G. "basically kidnapped" K.M.M. and moved her to Prince George.
- [60] According to L.E.G., after the separation she and R.C.M. shared parenting equally until R.C.M. had work and "basically disappeared".
- [61] Given my credibility findings, I prefer L.E.G.'s evidence. I find as a fact that the parties shared parenting of K.M.M. equally from December 1, 2016 until the end of May, 2017. Thereafter, K.M.M. was primarily with L.E.G. I further find that there was no delay in bringing an application for child support. L.E.G. sought child support in the Notice of Family Claim which she filed five months after the separation date, and she has attempted to get R.C.M. to pay child support from that time forward.
- [62] Having regard to all of the evidence and the law, I find that R.C.M. is responsible for paying child support for K.M.M. from June 1, 2017 onward.
- [63] R.C.M. claims that the \$20,000 that was released to L.E.G. out of the proceeds of the family home in December 2019 was for child support. As there is no evidence to support that contention, I am unable to accept that the interim distribution was made for that purpose. As noted above, R.C.M. has been paying child support of \$329 per month since December 15, 2020.
- [64] Given the above I find that R.C.M. is in arrears of child support as follows: Dates Children eligible for support from R.C.M. Amount of child support arrears December 1, 2016 to May 31, 2017 2 children - K.E.M. and K.I.M. (K.M.M.'s parenting time shared equally - no child support owing) (\$758 x 6 months) Total: \$4,548 June 1, 2017 to November 30, 2017 (New Child Support tables came into effect November 22, 2017) 3 children (\$998 x 6 months) Total: \$5,988 December 1, 2017 to March 31, 2018 3 children (K.E.M. turned 19 on March 28, 2018) (\$1,029 x 4 months) Total: \$4,116 April 1, 2018 to August 31, 2018 2 children- K.I.M. and K.M.M. (K.I.M. voluntarily withdrew from her parents' charge on August 28, 2018) (\$781 x 5 months) \$3905 September 1, 2018- July 31, 2022 1 child- K.M.M. (\$470 x 47 months = \$22,090) less (\$329 x 20 months = \$6,580) paid by R.C.M. pursuant to the Gaul Order Total: \$15,510 TOTAL ARREARS OWING: \$34,067 Section 7 expenses
- [65] L.E.G. seeks arrears of s. 7 (or special) expenses for all three girls since December 1, 2016. She also seeks special expenses for K.M.M. going forward.
- [66] Regarding K.E.M. and K.I.M., R.C.M. says that he has not paid any special expenses since the separation because he has not had any communication with them. Notwithstanding the lack of relationship with his daughters, R.C.M. is still responsible for contributing to their s. 7 expenses for the relevant time period.

- [67] Regarding K.M.M., L.E.G. is seeking an order that the parties share K.M.M.'s s. 7 expenses equally, including all of the expenses set out in s. 7 of the Guidelines and expenses for her soccer and hockey, including rep hockey. R.C.M. has not contributed to K.M.M.'s s. 7 expenses since the separation.
- [68] Section 7 of the Guidelines, which governs special and extraordinary expenses, provides that the best interests of the child and pre-separation spending patterns are relevant to the determination of what constitutes a special expense. It reads as follows: 7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:
- (a) child care expenses incurred as a result of the employment, illness, disability or education or training for employment of the spouse who has the majority of parenting time;
 - (b) that portion of the medical and dental insurance premiums attributable to the child;
 - (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
 - (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
 - (e) expenses for post-secondary education; and
 - (f) extraordinary expenses for extracurricular activities.
- [69] It is clear from the evidence that hockey has always been a big part of all of the girls' lives, both pre-and post separation. Continuing to play hockey is in their best interests. With regard to K.M.M., while hockey is her main passion, she is also involved in soccer and horseback riding. She was involved in these sports prior to separation. In fact it was R.C.M.'s mother who introduced her to horseback riding. I find that it is in K.M.M.'s best interests to continue to be involved in all of these sports. I pause to note that R.C.M. testified that he supports K.M.M. playing rep hockey.
- [70] L.E.G. seeks orders sharing the s. 7 expenses equally. I accept that as reasonable given the varying incomes of the parties over the period of their separation.
- [71] Given the above, I order that R.C.M. owes L.E.G. arrears of s. 7 expenses of a total of \$13,265, calculated as follows: Health Insurance (childrens' share) \$4,100 K.I.M. optical care (glasses and contacts) \$450 K.E.M. health \$250 K.I.M. and K.E.M. chiropractor \$350 K.I.M. and K.E.M. Hockey fees \$2,400 K.I.M. and K.E.M. Hockey equipment \$900 K.I.M. and K.E.M. Hockey tournaments \$2,500 K.I.M. and K.E.M. Field Hockey equipment \$600 K.M.M. Soccer

2018 - 2021 \$400 K.M.M. Riding Lessons \$3,600 K.M.M. Hockey fees 2018 - 2021 \$4,480
K.M.M. Hockey equipment \$1,500 K.M.M. Hockey tournaments \$5,000 Total Owing
 $\$26,530/2 = \$13,265$

- [72] Going forward I order that the parties share equally K.M.M.'s s. 7 expenses including hockey and soccer. ISSUE 3: DIVISION OF FAMILY PROPERTY AND DEBT Debt
- [73] The debt in issue relates to debts that were paid from the proceeds of the family home and debts that remain. The settled and outstanding debts include credit cards and unpaid personal (in respect of R.C.M.) and property taxes. In addition, R.C.M. seeks reimbursement for payments he made to mortgages and Lines of Credit on the family home following separation.
- [74] Both of the parties were involved in R.C.M.'s roofing business. While R.C.M. was the primary roofer, L.E.G. occasionally helped with roofing. She also kept the books and paid the bills for the business and the home. Both of the parties had access to the business income.
- [75] Throughout their marriage the parties habitually lived beyond their means. They lived on credit, repeatedly maxing out their available sources of income. They failed to pay debts and taxes. R.C.M.'s parents lent them money on several occasions. At least once, the R.C.M.'s parents put conditions on the loans in an effort to set the parties on a fiscally responsible track.
- [76] R.C.M. takes the position that all of the debt is family debt as it was used for family purposes. L.E.G. says it is R.C.M.'s business and/or personal debt.
- [77] It is virtually impossible to make sense of the parties' financial situation. Due to the state of their record keeping, and the way the parties conducted themselves financially, I am unable to conclude that any debt should be attributed solely to R.C.M. and/or his roofing company. I am satisfied that the parties were both privy to their financial state and that they chose to leave bills unpaid in order to use whatever money they had for other things.
- [78] Similarly, due to the state of their record keeping and the vagueness of the evidence, I am unable to conclude that R.C.M. should be reimbursed for payments he says he made to and for the family home. Additionally, I note that R.C.M. continued to live in the house following separation, and rented out a part of the property, while L.E.G. had to pay rent on accommodation for her and the children. Similarly, I am unable to find that an RBC Visa is family debt as urged by R.C.M. There is no documentation close in date to separation to support such a claim or place a value on it.
- [79] Accordingly, I find that the following debt is family debt and shall be shared equally: the RBC Homeline Line of Credit, the TD Line of Credit and the Canadian Tire credit card as of December 1, 2016. In addition, I am satisfied that all of the debts listed on the Direction to Pay dated September 13, 2019 and signed by L.E.G. are family debts and were properly paid for by the proceeds from the sale of the family home.

- [80] Pursuant to s. 87 of the FLA, the value of family debt must be determined as of the date of the hearing before the court respecting the division of property and family debt. However, s. 87 is subject to s. 95, which permits an unequal division if it would be significantly unfair to divide family property and/or debt equally. Section 95(2) sets out a number of factors that informs the "significant unfairness" analysis. Recently, in *Banh v. Chrysler*, 2022 BCCA 74 at para. 26, our Court of Appeal confirmed that the date of division may be varied if it would be "significantly unfair".
- [81] In this case, given the vagueness of the evidence, lack of documentation, the uncertainty surrounding what debt R.C.M. acquired post-separation, and the length of time from separation to trial, I am satisfied that there would be significant unfairness to L.E.G. to divide debt as at the date of this trial. Accordingly, I set the valuation date of the debt as the date of separation, December 1, 2016. Property
- [82] As stated above the proceeds from the sale of the family home being held in trust is the only family asset. The following advancements were made from the funds:
1. \$7,000 to R.C.M.,
 2. \$22,000 to L.E.G., and
 3. \$4,000 to pay for the Views of the Child report.
- [83] There is no evidence to support R.C.M.'s contention that \$20,000 was distributed to L.E.G. for child support. In order to equalize the interim distributions, \$7,500 must be deducted from the debts owing by R.C.M. to L.E.G.
- [84] R.C.M.'s claim for half of the federal child care benefits paid to the family for the three years preceding separation has no merit. Insurance Policy
- [85] R.C.M. concedes that L.E.G. is entitled to half of the insurance policy which he cashed in. R.C.M.'s Inheritance
- [86] R.C.M. is about to receive an inheritance from his father's estate. L.E.G. seeks an order that any of the sums owing under this order that are not satisfied with the funds remaining in trust should be paid from R.C.M.'s share of the estate. Given the acrimony between the parties and R.C.M.'s failure to pay any child support for several years, I agree that this is prudent. I direct that the executor of the estate of R.C.M.'s father shall pay to L.E.G. the remainder of the sums owing under this order after payment from the proceeds of the house sale being held in trust, from R.C.M.'s share of the estate.

CONCLUSION

[87] I make the following orders:

1. The parties are joint guardians of K.M.M.;

2. By consent, K.M.M. shall reside primarily with L.E.G. and shall have reasonable and generous parenting time with R.C.M. in accordance with K.M.M.'s wishes and as arranged between the parties;
3. R.C.M. will be solely responsible for all expenses to exercise his parenting time when that time is on his request;
4. R.C.M. is to have telephone or electronic access to K.M.M. each Monday and Thursday between 4:30 pm and 5:30 pm or at other times and days as arranged between K.M.M. and R.C.M.; contact will be initiated by R.C.M.;
5. By consent, Order 3 of the Order of Mr. Justice Gaul made December 3, 2020 is varied to read as follows: L.E.G. may apply for the renewal of the passport of K.M.M. without the consent of R.C.M. and she may travel outside of Canada without the necessity of a Statutory Declaration from R.C.M., provided that L.E.G. provides R.C.M. with K.M.M.'s travel itinerary at the earliest opportunity;
6. An income of \$50,000 per annum is imputed to R.C.M. for the purposes of child support and s. 7 expenses;
7. R.C.M. owes to L.E.G. child support arrears of \$34,067;
8. R.C.M. owes to L.E.G. s. 7 expenses arrears of \$13,265;
9. R.C.M. will pay to L.E.G. child support in the amount of \$470 per month commencing August 15, 2022 and continuing on the fifteenth day of every month thereafter for as long as K.M.M. remains a child of the marriage as defined by the Divorce Act or until further court order or agreement of the parties;
10. Commencing August 15, 2022, L.E.G. and R.C.M. shall share equally K.M.M.'s s. 7 expenses, including all of those set out in s. 7 of the Federal Child Support Guidelines and the expenses for enrollment and equipment for hockey, including representative hockey and soccer. Commencing August 2022, every six months, L.E.G. shall provide to R.C.M. an estimate of expenses for the upcoming six months. If R.C.M. takes issue with any expense, he shall indicate same in writing to L.E.G. within 14 days of receipt. Silence will be taken as acceptance of the anticipated expense. Once the expense is incurred, L.E.G. shall provide R.C.M. a statement outlining the expenses incurred along with receipts showing payment of same and R.C.M. shall reimburse her within 30 days of receipt;
11. By consent, R.C.M. shall pay to L.E.G. half of the proceeds of the insurance policy, being \$7,793;
12. The debts deducted from the house proceeds on the Direction to Pay dated September 13, 2019 were family debt;
13. The following debts are family debt and shall be shared equally between the parties and paid from the proceeds of the house being held in trust by Ms. Buchan:

- i. Royal Bank Line of Credit \$19,213 ii. TD Financing Line of Credit \$1,289 iii. Canadian Tire MasterCard \$7,654
14. R.C.M.'s total debt to L.E.G. is decreased by \$7,500 to equalize the interim distributions made to the parties from the house proceeds;
15. The remainder of the funds being held in trust shall be paid to L.E.G. to satisfy sums owing by R.C.M. to L.E.G. under this Order. With respect to any outstanding debt, this court directs that the executor of the estate of R.C.M.'s father shall pay to the Claimant the any amount remaining unpaid under this Order by the funds being held in trust, from the Respondent's share of the estate.
16. R.C.M. will keep his roofing business as his sole and separate property and be solely responsible for its debts;
17. Any remaining relief sought in the Amended Notice of Family Claim and Counterclaim filed in these proceedings is dismissed as if heard on the merits.
- [88] As L.E.G. is substantially successful she is entitled to her costs at Scale B. "Murray, J."

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